

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, Docket No. 3:18CR26

5 Plaintiffs, Toledo, Ohio

6 v. March 6, 2019

7 KARL J. ROGERS,

8 Defendant.

9 -----

10 TRANSCRIPT OF JURY TRIAL, VOLUME 2
11 BEFORE THE HONORABLE JAMES G. CARR
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the Plaintiffs: Tracey Ballard Tangeman
15 Matthew D. Simko
16 Office of the U.S. Attorney
Four SeaGate, Suite 308
Toledo, Ohio 43604
(419) 242-5675

17 For the Defendant:

18 Reese M. Wineman
19 6 West Main Street
Norwalk, Ohio 44857
(419) 668-6840

20
21 Court Reporter: Angela D. Nixon, RMR, CRR
22 1716 Spielbusch Avenue
Toledo, Ohio 43624
23 (419) 260-5259

24 Proceedings recorded by mechanical stenography, transcript
25 produced by notereading.

1 THE COURT: As I'll explain to the jurors, I'm
2 sorry to keep you all waiting. I've been here since 8:00
3 this morning, but first Wednesday of every month when I'm
4 back I have probation orientation. I simply forgot about
5 that yesterday.

6 A couple matters, the record will show that the
7 sound had been muted on the materials that were admitted as
8 exhibits yesterday. And, also, where are we? What's the
9 time table? Can we get to the jury today you think, Tracy?
10 What's the -- Matt, what's the situation?

11 MS. TANGEMAN: Yes, absolutely it will go to the
12 jury today. The government is prepared rest subject to the
13 admission of our exhibits.

14 THE COURT: Okay. Reese, what's your game plan?

15 MR. WINEMAN: Your Honor, we will be presenting
16 three witnesses.

17 THE COURT: Okay.

18 MR. WINEMAN: They will be Dylan McLaughlin,
19 Michael Rogers and Karl Rogers.

20 THE COURT: I'll have them spell their names when
21 they're on the stand.

22 MR. WINEMAN: Pardon me?

23 THE COURT: I'll have them spell their names on
24 the stand.

25 MR. WINEMAN: Pardon me?

1 THE COURT: Done by maybe 10:30 or so?

2 MR. WINEMAN: They're here now.

3 THE COURT: No, I meant will their testimony take
4 an hour, hour -- what I propose to do is read the jury
5 instructions, adjourn noon-time recess and maybe start at
6 1:30 or so.

7 MR. WINEMAN: Well, the defendant will probably
8 be testifying also.

9 THE COURT: Pardon?

10 MR. WINEMAN: The defendant will probably be
11 testifying also.

12 THE COURT: Oh, okay. I'd like to get the
13 instructions read this morning if we can. That takes about
14 40 minutes or so.

15 MR. WINEMAN: Sure.

16 THE COURT: Let's go to work. Okay. Thanks.
17 And I am sorry. I'll tell you it's probably one of the
18 most important things I think I do is to welcome --
19 honestly welcome the folks coming out of federal prison
20 back and let them know we look ahead, we don't look back.
21 And got -- I've been doing that for several years now. If
22 it works for one of those folks, then it's worth the
23 effort. And just -- remarkable thing is ex-felons, federal
24 felons sometimes with hideous records are getting jobs.
25 The jobs are out there. All set?

1 (Jury present in open court.)

2 THE COURT: Good morning. You may be seated.

3 Ladies and gentlemen, I'm very sorry. When I
4 said we'd start at 9:00, I forgot that the first Wednesday
5 of every month I have what I call probation orientation.
6 It's a monthly session with people whom we've sentenced at
7 some point in criminal cases, often very serious criminal
8 cases, who have -- are now coming out of prison, and
9 they're beginning their term of -- when they're under our
10 court supervision, and I do this every Wednesday, and I
11 simply -- it slipped my mind, and I apologize. I trust you
12 can understand it's an important part of my job, and try to
13 get those folks off to a good start now that they're back
14 home and go about the rest of their lives.

15 Okay, Ms. Tangeman, Mr. Simko, ready to proceed?

16 MS. TANGEMAN: We are, Your Honor.

17 THE COURT: Okay. And so what's next?

18 MS. TANGEMAN: Your Honor, subject to the
19 admission of the government's evidence, the government
20 would rest.

21 THE COURT: Okay. And we'll deal with that at
22 the conclusion of the case, as is my practice.

23 Mr. Wineman, it's your case -- case is with you.
24 You may proceed.

25 MR. WINEMAN: Yes, Your Honor. We would like to

1 offer Defense Exhibits A, B and C.

2 THE COURT: Okay. We will deal with that after
3 the -- at the conclusion of the case.

4 MR. WINEMAN: Fine.

5 THE COURT: Before the case goes back to the
6 jury.

7 MR. WINEMAN: I'd like to call Dylan McLaughlin
8 to the stand.

9 THE COURT: Okay.

10 MS. TANGEMAN: Your Honor, may we approach
11 briefly?

12 THE COURT: Sure. Deanna, why don't you swear
13 the witness.

14 (A side bar conference was had on the
15 record.)

16 THE COURT: What's the --

17 MS. TANGEMAN: Just wanted to note two things,
18 just wanted to note two things. The defense has the
19 opportunity to make a Rule 29 Motion, and also a -- if they
20 would like to do their opening now.

21 THE COURT: Yeah, that's right.

22 MR. WINEMAN: Yeah, I'd.

23 THE COURT: Did you want to file -- for the
24 record file a Rule 29 Motion?

25 MR. WINEMAN: Yeah, Rule 29 Motion.

1 THE COURT: That will be denied for the record.

2 I think that's important to preserve the record for rights

3 on appeal. And do you want to make a brief opening?

4 What's your --

5 MR. WINEMAN: No, I think --

6 MS. TANGEMAN: You'll waive it?

7 THE COURT: That's fine. Or if you just want to

8 say, look, we have this number of witnesses and I'm calling

9 my first witness right now, why don't you do that. Thanks.

10 (Side bar concluded.)

11 DYLAN MCLAUGHLIN,

12 was herein, called as if upon examination, was first duly

13 sworn, as hereinafter certified, and said as follows:

14 THE COURT: Mr. Wineman?

15 MR. WINEMAN: Yes, Your Honor.

16 Ladies and gentlemen, we've got three witnesses

17 we're going to call in addition to the defendant. I'd like

18 to have you recall the magistrate indicated that you need

19 to wait until all the evidence is in before you make a

20 determination, and I'm sure all you'll all do that.

21 Mr. McLaughlin's going to be our first witness,

22 and basically, he's known Karl for several years. They

23 were in the Marine Corp. together. And we anticipate he's

24 going to testify that since he's known him that he has

25 never observed any type of behavior which would indicate to

1 him that Karl suffered from the addiction. It's been
2 pretty much demonstrated through the evidence that the
3 government has presented to you.

4 And the other two witnesses, one is Karl's
5 father, and the other is his brother, who's known him
6 obviously his whole life, that is his brother's' whole
7 life. They're going to testify to similar observations
8 they've made through the years. Thank you.

9 THE COURT: Okay. And good morning, sir.

10 A. Good morning.

11 THE COURT: If you could please move so you're
12 about this distance from the microphone, otherwise the
13 folks will have difficulty hearing you.

14 Please tell the jurors who you are.

15 A. My name is Dylan Graham McLaughlin.

16 THE COURT: I'm sorry, go ahead. I interrupted
17 you. Finish up.

18 A. I served with Karl in the United States Marine
19 Corp. from 2010 to 2014, those are my years of service. We
20 were in the same company on Camp Pendleton in California.

21 THE COURT: And were you deployed?

22 A. I was deployed, Your Honor. I was --

23 THE COURT: Pardon me?

24 A. I was deployed, yes, I was.

25 THE COURT: Where were you deployed?

1 A. I was sent to Afghanistan RC Southwest Camp
2 Leatherneck in southern Afghan late 2012, early 2013.

3 THE COURT: Well, it's neither here nor there,
4 but my father served in the Marine Corp. in World War II,
5 very proud of his service. Senator Glenn, who I suspect
6 everyone knows is a Marine Corp. Colonel, one of our first
7 astronauts, one of the Senators who sponsored me for this
8 position. He came to my hearing. I went up to him and
9 said, Senator, I'm so pleased and honored that you've come
10 for my confirmation hearing. Senator, I'd very much like
11 for you to meet my father, who, like yourself, is an
12 ex-Marine, I noticed the smile. His smile that patented
13 the million watt smile turned graciously cold. I thought,
14 oh, my God, I'm at the end of the race, but I'm flat on the
15 tracks chewing cinders (phonetic), what happened. He
16 starts to smile again, I'm sure ignorant people like myself
17 needed the instruction he gave me. Young man, there is no
18 such thing as an ex-Marine. I'd be proud to meet your
19 father who like myself, is a former Marine. So thank you
20 for your service.

21 A. Thank you, Your Honor.

22 THE COURT: And go ahead. I'll just jump ahead.
23 Mr. Wineman, why don't you go ahead and find out what he
24 has to tell us about the defendant.

25 MR. WINEMAN: Yes, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. WINEMAN:

3 Q. Dylan, you met Karl when?

4 A. I met Karl on Camp Pendleton. He was actually in
5 29 Palms when I checked into the unit, so I didn't meet him
6 until I had been with ammunition company for a month or
7 two.

8 Q. Okay. And you've kept in touch with him since
9 he's gotten out of the Marine Corp., and you've gotten out
10 of the Marine Corp. I take it; is that right?

11 A. Yes, sir.

12 Q. I won't call you an ex-Marine.

13 Now, during the period of time that you were in
14 contact with him during the Marine Corp., did he ever
15 disclose to you any evidence of addiction to child
16 pornography?

17 A. No, sir.

18 Q. Okay. And you've kept in contact since you've
19 last served with him, is that right?

20 A. Yes.

21 Q. And at any point did he ever talk to you about
22 issues with -- with being addicted child pornography?

23 A. No, that's -- nothing remotely like that. No,
24 never.

25 Q. Okay.

1 MR. WINEMAN: Nothing further, Your Honor.

2 THE COURT: Okay. Ms. Tangeman, Mr. Simko, your
3 witness.

4 CROSS-EXAMINATION

5 BY MR. SIMKO:

6 Q. Mr. McLaughlin, my name is Matt Simko. I'm with
7 the United States Attorney's Office. Let me also say thank
8 you for your service.

9 A. Thank you.

10 Q. You indicated that you served with the defendant
11 until 2014?

12 A. Yes, sir.

13 Q. All right. And then -- do you live here in the
14 area?

15 A. I do not, sir. I live in Virginia.

16 Q. Okay. And do you visit often?

17 A. No, sir. It's only been maybe every
18 year-and-a-half or two years I've been able to see him.

19 Q. Okay. And have you ever been to his house?

20 A. I have.

21 Q. His bedroom?

22 A. I have.

23 Q. Have you looked around in there at different
24 things?

25 A. I have.

1 Q. You have? What did you look for?

2 A. Well, I'm not sure what you mean what did I look
3 for. It was just kind of as friends checking out each
4 other's living spaces.

5 Q. Okay. You check out his -- the closet near his
6 bedroom?

7 A. I don't recall looking at that, no.

8 Q. Would it surprise you to know that the government
9 has found child pornography on his computers?

10 A. Yes, it would. I was shocked when I heard the
11 news.

12 Q. Surprising to know that he admitted to
13 investigators that he is, in fact, addicted?

14 A. Yes, it would surprise me.

15 Q. Okay. Would it be something that he would tell
16 you?

17 A. We were very close, sir, and if there was anybody
18 in the world that he was going to be able to tell it would
19 have been me.

20 Q. You said you were deployed?

21 A. Yes, sir.

22 Q. Was the defendant deployed with you?

23 A. No, he was not.

24 Q. All right. Nothing further.

25 THE COURT: Okay. Mr. Wineman, anything further?

1 MR. WINEMAN: No, Your Honor. Thank you.

2 THE COURT: Sir, you're welcome to stay or free
3 to go, or you're welcome to stay. Thank you very much for
4 coming. Once again, thanks for your service, and glad to
5 see you're home safe and sound.

6 A. Thank you, Your Honor. I appreciate it.

7 THE COURT: One thing I can remember as a young
8 boy, as a child, is my mom picking up after me and my
9 brother and sister and crying, boy, I wish your father were
10 here. I understand what it meant to you and your family.
11 Thank you.

12 Mr. Wineman, your next witness.

13 MR. WINEMAN: Yes, I'd like to call Karl C.
14 Rogers, Your Honor.

15 THE COURT: Okay.

16 KARL C. ROGERS,
17 was herein, called as if upon examination, was first duly
18 sworn, as hereinafter certified, and said as follows:

19 THE COURT: Good morning, sir.

20 A. Good morning.

21 THE COURT: You've got to move up to about this
22 far from the microphone, otherwise -- the acoustics in
23 here -- jurors I'm sure will tell you if they can't hear,
24 I've encouraged them to do so.

25 Please introduce yourself to the ladies and

1 gentlemen. Tell them who you are.

2 A. I am Karl C. Rogers.

3 THE COURT: And a couple questions, and what is
4 your community of residence? What city or town do you live
5 in?

6 A. Oh, I live in Orville, here in Ohio.

7 THE COURT: Okay. And how do you happen to know
8 the defendant?

9 A. The defendant is my son.

10 THE COURT: Okay.

11 A. Karl James Rogers.

12 THE COURT: So obviously you've known him his
13 entire --

14 A. Yes.

15 THE COURT: Okay. Mr. Wineman?

16 DIRECT EXAMINATION

17 BY MR. WINEMAN:

18 Q. Karl, what do you do for a living?

19 A. Right now I'm a weekend and night dispatcher at a
20 trucking company.

21 Q. And you were in the Marine Corp. up until when?

22 A. I was discharged from the Marine Corp., actually
23 retired in 1997.

24 Q. And did you work for trucking companies since
25 then?

1 A. Yes, I have.

2 Q. Okay. Now, we know that you're Karl's dad, and I
3 need to ask you, from the time he was in his early teens,
4 did you ever observe Karl indicate any type of activities,
5 through words or actions, of being addicted to child
6 pornography?

7 A. No, I did not.

8 Q. And I take it the first time you learned of
9 anything like that is when these charges were filed, is
10 that true?

11 A. That would be a fair statement, yes.

12 Q. Okay. And during the years after he had left
13 home, you had contact with him on a regular basis?

14 A. You mean as when he left home and went in the
15 Marine Corp.?

16 Q. Yeah, when he went into the Marine Corp.

17 A. I would -- I would -- occasional contact, yes.

18 Q. Okay. And during that period of time, did he
19 ever say anything to you that would have led you to believe
20 that he was addicted to child pornography?

21 A. No, he did not.

22 Q. Okay. Now, I take it that you're aware of any
23 other criminal activity, or lack there of, that he's been
24 involved in; is that right, Karl?

25 A. I'm not aware of any other activity he's involved

1 in, criminal or otherwise.

2 Q. Never had any other charges of any kind that
3 you're aware of; is that right?

4 A. That would be a fair statement, correct, yes.

5 Q. Were you -- were you and Karl fairly close as far
6 as communication?

7 A. Maybe not as close as I should have been.

8 Q. Okay. Well, I understand that. You understand
9 now, based upon the charges that he's facing and probably
10 based on contact you've had with him since those charges
11 have been filed, that he has, in fact, admitted that he was
12 addicted to child pornography. Do you understand that?

13 A. No. Please say that again. I didn't fully
14 understand that.

15 Q. Okay. Well, the evidence that's been presented
16 here, through his own statements, indicated that. If I
17 told you that, would you, in fact, understand that he is,
18 in fact, addicted?

19 A. I don't have any knowledge of that.

20 Q. Okay. I'm not asking for an expert opinion. Let
21 me ask you this, would you and your wife be willing to
22 support him in dealing with the addiction of being addicted
23 to child pornography?

24 A. Yes, he's our son. I said, yes, we would,
25 especially my wife.

1 Q. Okay.

2 THE COURT: Actually, sir, perhaps just a
3 fraction of an inch or so back from the microphone. Thank
4 you for following my instruction, but too close tends to
5 muffle. It's hard to get the right distance, about the
6 distance, hand length like this is fine. Should work.
7 Thank you, sir.

8 MR. WINEMAN: Okay. I have no further questions,
9 Your Honor.

10 THE COURT: Okay. Ms. Tangeman and Mr. Simko?

11 CROSS-EXAMINATION

12 BY MR. SIMKO:

13 Q. All right. Sir, my name's Matthew Simko, United
14 States attorney's Office. You indicated that you would
15 support your son, you and your wife would support your son
16 through his addiction to child pornography, is that what
17 your testimony is?

18 A. Yes.

19 Q. Because you're his family, right?

20 A. Yes.

21 Q. And you would do anything for him, right?

22 A. I don't know where you're going with that, but I
23 would do a lot to help support him.

24 Q. Nothing further.

25 THE COURT: Okay. Sir, you may step down.

1 MR. WINEMAN: Your Honor --

2 THE COURT: I'm sorry, Mr. Wineman, redirect? My
3 apologies.

4 REDIRECT EXAMINATION

5 BY MR. WINEMAN:

6 Q. You wouldn't get up on that stand and lie for
7 him, would you?

8 A. No, sir.

9 Q. Okay. And, amazingly, the base he actually
10 served on in the Marine Corp. was the same base you were
11 assigned to, or one of the same bases; is that right?

12 A. Correct, same one I spent the majority of my time
13 at, yes.

14 Q. Okay. All right.

15 MR. WINEMAN: Nothing further, Your Honor.

16 THE COURT: Sir, I've informed the jury and let
17 the former witness know that my dad was a former Marine,
18 very proud of his service, and thank you for your service.

19 A. We appreciate your support.

20 THE COURT: Sincerely. You're free to go or
21 you're welcome to stay. It's entirely up to you. Thank
22 you for coming.

23 Mr. Wineman, you got another witness?

24 MR. WINEMAN: I would call Michael Rogers, Your
25 Honor.

1 MICHAEL ROGERS,

2 was herein, called as if upon examination, was first duly
3 sworn, as hereinafter certified, and said as follows:

4 THE COURT: Good morning, sir.

5 A. Good morning.

6 THE COURT: You've got to get about this
7 distance, about a hand's distance from the microphone, far
8 away -- far away nobody can hear you, get too close you get
9 kind of mumbled. We'll let you know if there's a problem.

10 Please tell the ladies and gentlemen who you are.

11 A. Michael R. Rogers.

12 THE COURT: And I assume that you're related to
13 him?

14 A. Correct --

15 THE COURT: -- to the defendant?

16 A. Brother.

17 THE COURT: Older, younger?

18 A. He's my older brother.

19 THE COURT: And what town or city are you living
20 in now?

21 A. North Lawrence, Ohio.

22 THE COURT: Okay. What do you do for a living?

23 A. I have two jobs. I work full time for a plumbing
24 company doing excavating on a three-man operation, and I
25 also own my own excavating company.

1 THE COURT: Okay. Mr. Wineman?

2 DIRECT EXAMINATION

3 BY MR. WINEMAN:

4 Q. Okay. Mike, you've known your brother obviously
5 all your life, you're quite a bit younger than he is, is
6 that right?

7 A. Five years.

8 Q. Five years, okay. And during the period of time
9 when you were growing up, or during the period of time
10 since you left home, did you ever observe, or did Karl ever
11 say anything to you about being addicted to kiddy porn?

12 A. No, we actually lived in the same bedroom for
13 quite many years on top of bunk beds, and there was no --
14 nothing about that, nothing that I ever saw.

15 Q. Okay. He said anything and you never saw
16 anything. Are you pretty close, and have you been pretty
17 close with him since you left home?

18 A. Yeah. I mean, we don't see each other every day,
19 call each other once a week or text. And then generally at
20 least visit each other once a month, whether it be at my
21 house or his house.

22 Q. Okay. Did you ever observe anything at his house
23 or anything or in the way that he behaved that would give
24 you an indication that he was addicted to child
25 pornography?

1 A. No.

2 Q. Okay. And it's been pretty much established
3 through the testimony that he is, in fact, addicted to
4 child pornography. In the future, would you be willing to
5 give him support in dealing with that addiction?

6 A. Absolutely.

7 Q. I have nothing further.

8 THE COURT: Okay. Ms. Tangeman and Mr. Simko,
9 your witness.

10 MS. TANGEMAN: Thank you.

11 CROSS-EXAMINATION

12 BY MS. TANGEMAN:

13 Q. Good morning, sir.

14 When was the last time you lived together with
15 the defendant?

16 A. I believe it's been six years since I moved out.

17 Q. And he lived alone at the Bullhead residence, did
18 he not?

19 A. Correct, to my knowledge.

20 Q. And he had lived there alone for several years;
21 is that correct?

22 A. I believe it's been two years without checking
23 dates, but, yes.

24 Q. Has he ever lived with a person at that location?

25 A. To my knowledge, no.

1 Q. And sir, you're his brother, you obviously love
2 him, right?

3 A. Correct.

4 Q. And you'd hate to see him put in harm's way,
5 wouldn't you?

6 A. Correct.

7 THE COURT: I couldn't hear you.

8 BY MS. TANGEMAN:

9 Q. I said he'd hate to see his brother put in harms
10 way.

11 A. Correct.

12 Q. Is that yes?

13 A. Correct.

14 MS. TANGEMAN: I don't have anything further.

15 THE COURT: Mr. Wineman, anything further for
16 Mr. Rogers?

17 MR. WINEMAN: Nothing from him.

18 THE COURT: Sir, thank you for coming. You're
19 free to go, or you're welcome to stay. It's entirely up to
20 you. Thanks, again, for coming.

21 Mr. Wineman, your next witness?

22 MR. WINEMAN: Yeah, I'd like to call the
23 defendant, Karl Rogers, your Honor.

24 KARL J. ROGERS,

25 was herein, called as if upon examination, was first duly

1 sworn, as hereinafter certified, and said as follows:

2 THE COURT: Good morning. You've heard me say
3 about the microphone, so -- and I know the jury knows your
4 name, but why don't you introduce yourself to the jury.

5 A. As you know, I'm Karl J. Rogers, the defendant in
6 this case. As far as employment, I've worked for the
7 railroad for about the past 14, 15 years. I took a short
8 break to serve four years in the Marine Corp., and before
9 that I was in school. I, pretty much right out of school,
10 went to working full time.

11 THE COURT: Did you graduate from high school?

12 A. Yes, I did.

13 THE COURT: What high school?

14 A. It was Orville High School, but I did a two-year
15 program at the Wayne County School -- Career Center also.

16 THE COURT: And then did you -- did you enlist in
17 the Marine Corp. then?

18 A. No, I didn't enlist right away.

19 THE COURT: So how long had you been out of
20 school before you enlisted, about?

21 A. It was around six years. I got out of school in
22 2002, and I enlisted when work started slowing down.

23 THE COURT: So about what years were you in
24 the -- in the Marine Corp?

25 A. I enlisted in 2009, and I got out at the end of

1 2013.

2 THE COURT: And were you, like your companion,
3 also deployed?

4 A. No, I was never deployed.

5 THE COURT: Okay. Anyway, thank you for your
6 service. You've heard me say no greater respect that
7 persons like yourself and others who served -- served in
8 Marine Corp.

9 And what railroad have you worked for?

10 A. I worked for -- the whole time for the Wheeling
11 Lake Erie Railway.

12 THE COURT: What did you do?

13 A. Well, until the case started I was a locomotive
14 engineer.

15 THE COURT: Okay. And I'm not familiar, where
16 does that railroad run, does that run to Sandusky or
17 whatever?

18 A. The Wheeling and Lake Erie railway has track all
19 the way from -- their own track all the way from Bellevue
20 to Connellsville, Pennsylvania.

21 THE COURT: Is it a coal hauling railroad? Just
22 what does it do?

23 A. Right now, because of -- because of the boom in
24 hydraulic manufacturing, the main product is natural gas.

25 THE COURT: Okay. Mr. Wineman?

1 MR. WINEMAN: Thank you.

2 DIRECT EXAMINATION

3 BY MR. WINEMAN:

4 Q. First of all, I'd like to start out, and we've
5 heard your statements that were made to the law enforcement
6 officers that were at your home, but would you indicate,
7 please, when and how it came about that you first became
8 addicted to child pornography?

9 A. Well, I guess it started -- I just happened to
10 cross something on the internet when I was younger, and it
11 was -- I guess you could say more of, like, a nudist photo.
12 And then just after seeing that, then it -- I just happened
13 to cross more and different things.

14 Q. Okay. And as you indicated in your statements,
15 which ladies and gentlemen of the jury have heard part of,
16 you were not an uploader, but you were only a downloader.
17 What does that mean exactly?

18 A. I never made any kind of attempt to share
19 anything with anybody. It just content that was already
20 made available on the internet by other people is all I
21 ever had any dealings with.

22 Q. Okay. So you only downloaded as opposed to
23 transferring to other individuals; is that right?

24 A. That's correct.

25 Q. Okay. And tell -- tell us a little bit about the

1 first contact you had with law enforcement concerning this
2 particular matter.

3 A. Well, I parked my vehicle at the railroad. I
4 was -- I was actually walking into work, and I -- an Agent
5 Anschutz approached me, and he told me who he was and that
6 they were there, and they had a warrant to search my house.

7 Q. Okay. And did you go with them voluntarily then?

8 A. I did go back, and I was told that if I didn't
9 give the keys to them, that they would have to force entry
10 into the house.

11 Q. Okay. So you gave the keys to them?

12 A. Yes.

13 Q. Okay. And then once you were in the house, you
14 identified certain areas where computers with evidence was
15 contained; is that correct?

16 A. Yes, after -- after being questioned for quite a
17 bit of time.

18 Q. Okay. About how long?

19 A. I'd say at least 30 to 40 minutes.

20 Q. Okay. And then you identified where the
21 computers were and where the videos were containing the
22 pornography?

23 A. Yes.

24 Q. And did you give them the combination to the one
25 safe that appears in the pictures?

1 A. Yes, I did.

2 Q. Okay. All right. Now, in your interview, it's
3 clear that at the time, and I believe Detective Allen that
4 was questioning you, you clearly indicated that you
5 believed you were addicted to child pornography; is that
6 right?

7 A. Yes.

8 Q. Okay. Is that the first time you ever talked to
9 anybody about that addiction?

10 A. That's correct.

11 Q. Okay. And now, at that point in time, and as you
12 sit there today, do you accept the fact that you are
13 addicted to child pornography?

14 A. Yes.

15 Q. Okay. And are you willing to go at any lengths
16 to deal with that addiction to prevent that type of
17 activity from taking place in the future?

18 A. Yes, I'm willing to seek out, I guess, counseling
19 treatment.

20 Q. Okay.

21 THE COURT: Excuse me. Deanna -- keep going. I
22 apologize for interrupting. You can continue, Mr. Wineman,
23 please.

24 MR. WINEMAN: Pardon me?

25 THE COURT: Go ahead, Mr. Wineman.

1 MR. WINEMAN: Thank you.

2 BY MR. WINEMAN:

3 Q. Okay. Karl, once again, we were talking about
4 the conversation you had with Detective Allen that day, and
5 that was -- were both agents present during that?

6 A. For the majority of the time they were both
7 there, but there was a time where one or the other had
8 left.

9 Q. Okay. Now, we've talked a little bit about up
10 loading and downloading. During your time that you
11 obtained and possessed these materials, did you ever give
12 any of those materials to anybody else?

13 A. No, I didn't.

14 Q. Okay. Did you take measures to prevent the
15 materials from being obtained by anybody else?

16 A. Yes.

17 Q. What were those measures?

18 A. Well, I locked the computers in a safe.

19 Q. Okay. Okay. And any other technical things you
20 did to avoid transfer of that information?

21 A. The files were also encrypted.

22 Q. Okay. And that's in your statement about --
23 well, I believe one of the detectives asked you about
24 whether or not they were encrypted, and you told them they
25 were; is that right?

1 A. That's correct.

2 Q. Okay. Did you ever show any of these films or
3 depictions, as the ones we observed yesterday, to anybody
4 else?

5 A. No, I didn't. That's why I was so puzzled when
6 they showed up on my door step.

7 Q. Okay. Okay. The wonders of the internet I
8 guess; is that right?

9 A. Correct.

10 Q. Okay. Now, you have, I'm going to say or call it
11 hit bottom when they were at your house that day, and you
12 admitted to them that you had this addiction, and you
13 understand there's a long way to go to deal with that
14 addiction beyond what's happened. You understand that?

15 A. Yes.

16 Q. And you're willing to do that?

17 A. Yes.

18 Q. Okay. I have nothing further.

19 THE COURT: Okay. Ms. Tangeman or Mr. Simko?

20 CROSS-EXAMINATION

21 BY MS. TANGEMAN:

22 Q. Good morning, sir.

23 A. Good morning.

24 Q. Just so we're clear, you lived alone at the
25 Bullhead residence that we're talking about; is that

1 correct?

2 A. Yes.

3 Q. And that master bedroom was your bedroom,

4 correct?

5 A. I wouldn't call it a master bedroom, but that was
6 the bedroom I stayed in.

7 Q. The bedroom that held all of the electronics and
8 safes and lockboxes, that was your bedroom, correct?

9 A. Yes.

10 Q. And you obviously had a lot of tech savvy, right,
11 because you were using various kinds of electronics, would
12 that be fair to say?

13 A. Yes.

14 Q. That included radios, scanners, gaming systems,
15 laptops, hard drives, computer disks, wouldn't that include
16 that?

17 A. A lot of those things were used in relation to
18 employment I had.

19 Q. You were still using them, though, correct?

20 A. Yes.

21 Q. And you knew how to use them, didn't you?

22 A. Yes.

23 Q. Now, tell the jurors what a flashlight is.

24 THE COURT: I'm sorry, I didn't hear the word
25 myself.

1 BY MS. TANGEMAN:

2 Q. Tell the jurors what a fleshlight is.

3 A. It's a sex toy.

4 Q. And it's used for your sexual gratification,
5 correct?

6 A. I didn't know that that was illegal.

7 Q. Did you use it for your sexual gratification?

8 A. Yes.

9 MS. TANGEMAN: And, Ms. Ramone, could you pull up
10 Exhibit 24, please?

11 BY MS. TANGEMAN:

12 Q. You kept it in a lockbox under your bed, is that
13 right?

14 A. Yes.

15 Q. And those are several fleshlights, is that
16 correct?

17 A. Yes.

18 Q. And if we could go to Exhibit 23, please.

19 The item that we're seeing right here is actually
20 a sleeve for a fleshlight, is it not?

21 A. No, it actually isn't.

22 Q. It's just another sex toy then?

23 A. It's a different kind.

24 Q. Is that a yes?

25 A. Yes.

1 Q. Would it also be fair to say that the sex toy is
2 in close proximity, in fact, right underneath some computer
3 disks, is that right?

4 A. That's only a box, that's not the toy itself.

5 Q. Answer my question, please. Is that sex toy
6 found underneath some computer disks?

7 A. Yes.

8 Q. And that sex toy is found underneath computer
9 disks with child pornography next to some girl's underwear,
10 aren't they?

11 A. Yes.

12 Q. Now, if we can pull up Exhibit 17, please.

13 We're seeing another fleshlight in this Exhibit
14 17, are we not?

15 A. Yes.

16 Q. And that's right underneath the Dell laptop that
17 we heard contained all of that child pornography as well,
18 correct?

19 A. Yes.

20 Q. And there is also the fleshlight being kept right
21 near some other disks that contain child pornography,
22 correct?

23 A. Yes.

24 Q. You may clear it out.

25 And that's because, as you've told us here today,

1 you're addicted to child pornography, aren't you?

2 A. Yes.

3 Q. And an addiction is powerful, it makes you want
4 to do things over and over again, doesn't it?

5 A. Yes.

6 Q. And in your case with your addiction, it makes
7 you want to look and receive and seek out more and more
8 child pornography, correct?

9 A. That was the case in the past.

10 Q. Well, wasn't that the case when the FBI came into
11 your house and came to you?

12 A. Yes.

13 Q. And in order to be able to feed that addiction,
14 you have to be able to get child pornography, don't you?

15 A. Yes.

16 Q. And you weren't producing it at your house,
17 right?

18 A. No.

19 Q. You weren't producing child pornography anywhere
20 else, right?

21 A. No.

22 Q. And that means you had to get it from the
23 internet, right?

24 A. Yes.

25 Q. And in order to be able to get it from the

1 internet, you have to download it, don't you?

2 A. Yes.

3 Q. Now, you mentioned also that you encrypted your
4 computers, but you also had encrypted containers within
5 your Dell laptop; is that correct?

6 A. That's not accurate, only there was encrypted
7 containers, the system itself was not encrypted.

8 Q. But there were encrypted containers on the Dell
9 laptop?

10 A. Yes.

11 Q. So that's an encryption, basically, inside of a
12 computer that's under lock and key, is that right?

13 A. Yes.

14 Q. And you also used cleaning programs, like
15 BleachBit to wipe your computer every now and then, right?

16 A. Yes.

17 Q. Because you wanted to get rid of some of the
18 things that were on your computers, your electronics,
19 right?

20 A. That wasn't the only purpose.

21 Q. That was one of them, wasn't it?

22 A. Yes.

23 Q. Now, you admitted to the -- to the police at the
24 scene to your downloading or receiving of child
25 pornography, would that be fair?

1 A. Yes.

2 Q. And you're not denying that here today, are you?

3 A. No.

4 Q. And, sir, would it be fair to say, too, that you
5 were cooperative with the detective who interviewed you?

6 A. Yes.

7 Q. And would it also be fair to say that the people
8 who interviewed you were professional with you?

9 A. Somewhat.

10 Q. Well, they didn't raise their voice with you, did
11 they?

12 A. No.

13 Q. They gave you water, right?

14 A. Well, it was my water out of my refrigerator.

15 Q. They gave you water, though, didn't they?

16 A. Yes.

17 Q. They didn't cuff you before the interview, right?

18 A. Not that I recall.

19 Q. And you weren't cuffed during the interview
20 either, were you?

21 A. No.

22 Q. And at one point after you had made admissions,
23 they even said to you we're not going to talk to you any
24 differently, right?

25 A. Yes.

1 Q. And they never threatened you or promised you
2 anything either, did they?

3 A. No.

4 Q. One moment, please.

5 MS. TANGEMAN: I have nothing further.

6 THE COURT: Mr. Wineman, redirect?

7 MR. WINEMAN: Thank you.

8 REDIRECT EXAMINATION

9 BY MR. WINEMAN:

10 Q. Now, Karl, we've looked at some of these things
11 in boxes as far as those sexual devices and all that type
12 of thing. Did you ever in any way molest any children over
13 the years?

14 A. No.

15 Q. And I take it you never used those devices on any
16 children?

17 A. No.

18 Q. And never -- never been charged with or convicted
19 of any felony in the past, have you?

20 A. No.

21 Q. Okay.

22 MR. WINEMAN: Nothing further.

23 THE COURT: Okay. Recross?

24 MS. TANGEMAN: Nothing further. Thank you.

25 THE COURT: Okay. Sir, you may step down. Thank

1 you.

2 Mr. Wineman, do you have any further witnesses,
3 or does that conclude?

4 MR. WINEMAN: No, Your Honor, no additional
5 witnesses.

6 THE COURT: Okay. Does the government have any
7 rebuttal testimony?

8 MS. TANGEMAN: We do not, Your Honor.

9 THE COURT: Okay. Both sides rest subject to the
10 admission of exhibits, which we'll handle in a moment.

11 Ladies and gentlemen, we're going to take a
12 break. You've heard all the evidence and have seen
13 whatever exhibits will be back with you in the jury room.
14 I anticipate that they'll all be admissible, but I'm not
15 sure, so we'll have to wait and see. I'll work with the
16 lawyers on that shortly. That may take a while, and I
17 can't really predict. I doubt whether they'll take too
18 long. Quite candidly, and, once again, I have to
19 apologize, my staff is working and putting the final
20 touches on the final jury instructions. The case has
21 actually concluded somewhat sooner than we anticipated,
22 which is ultimately good. I mean, it's fortunate and good
23 for you and for everybody else. So I have to tend to that
24 and just have the lawyers look at the final version. I'm
25 sure it will be perfectly okay, it's fairly standard legal

1 language, somewhat different, in some respects, in regard
2 to what you heard earlier, primarily having to do with your
3 duties as a juror and how you go about performing those
4 duties once the case is in your hands. I expect we're
5 going to be at least 15, 20 minutes, perhaps longer. So
6 why don't we expect maybe -- at the earlier I would assume
7 10:15 we would have you back in the courtroom, perhaps a
8 bit later. I'll talk to the lawyers right now, and then
9 we'll have Deanna let you know.

10 Don't start talking about the case, even though
11 you've heard all the evidence, and you'll say, gee, Judge,
12 come on now, you told us the instructions before, we
13 have -- we recall those, we've seen the evidence. We've
14 heard the evidence. Well, again, you don't have the
15 exhibits with you so you don't know for sure which of those
16 will be in. I expect all of them, but I can't be assured
17 of that. I haven't heard from the lawyers. But most
18 importantly, you haven't heard my final charge, which, in
19 essence, is what you've already heard, but, nonetheless,
20 you can't start deliberating until you get my final charge,
21 the additional instructions that are in there. So find
22 something else to talk about for a while. The case will be
23 in your hands if not before noon, then certainly sometime
24 this afternoon. And we will adjourn no matter what in
25 ample time for those of you who desire to go over to St.

1 Francis or elsewhere on Ash Wednesday to attend those
2 services. We'll have ample opportunity to do that as well.
3 So as I said, the case will be with you sometime today.
4 And at that point, you set the time table and I'll explain
5 that to you a little later.

6 So still keep an open mind. Don't talk about the
7 case, and don't have anything to do with any of us or
8 anything to do with the case here in the courtroom or in
9 the courthouse. So you may step down, and I'll be working
10 with the lawyers. Thank you.

11 (Whereupon the jury was excused.)

12 THE COURT: You may be seated. You should have,
13 or will be getting very shortly the final instructions.
14 And, again, my apologies. You were very efficient, and I
15 appreciate that, both of you. Nicely tried.

16 What I'd like to do is if you can look, take a
17 glance at the final instructions, I think they're okay.
18 It's basically boiler plate, we may have tidied up one or
19 two little things which Tracey, I think you have noted, I
20 can't recall exactly, I would like to give those before
21 closing argument. Otherwise, quite candidly, I'd like to
22 have you do closing argument, or we can simply adjourn
23 until 1:30, which is kind of a long time to wait, but if we
24 can do either of those tasks, preferably the jury
25 instructions, I'd really like to do so. And I trust that's

1 okay with you guys, Tracey, Matt?

2 MS. TANGEMAN: Yes, that is fine. Would you like
3 to handle exhibits, Your Honor?

4 THE COURT: Yes, absolutely, right now. Let's
5 wait for Deanna so that we have the professional clerk to
6 keep track rather than the amateur.

7 Okay. Let's turn to the government. And
8 Mr. Wineman, I will assume that you'll renew your Rule
9 21 -- 29 motion shortly, but go ahead.

10 MR. WINEMAN: Yes, Your Honor.

11 MS. TANGEMAN: Thank you, Your Honor. So the
12 government would be moving for admission, and we'll just
13 take these in sections, of Exhibits 1, which is the
14 representative sample of child pornography. We would not
15 be moving for admission of Exhibit 2, that was only marked
16 for appellate purposes.

17 THE COURT: Mr. Wineman, I assume you have no
18 objection unless you speak up as she's going through the
19 list.

20 MR. WINEMAN: I understand that, yeah.

21 THE COURT: Do you expect to have any objection
22 to anything?

23 MR. WINEMAN: Pardon me?

24 THE COURT: Do you expect -- do you presently
25 anticipate any objection?

1 MR. WINEMAN: Not at this point, Your Honor.

2 We've seen the exhibits and --

3 THE COURT: Okay. Go ahead and admit them, and,
4 unless otherwise objected to, they will be admitted. Go
5 ahead, Ms. Tangeman. I think we can move through fairly
6 quickly.

7 MS. TANGEMAN: Exhibit 3 is the disk of the
8 forensic examination by Investigator Howell, and noting
9 that that is a clean copy that does not contain child
10 pornography. Exhibit 4 and Exhibit 5 are his two reports,
11 4 being the Investigative Analysis Report, and 5 being the
12 Investigation Protocol Report. Exhibit 6 is his CV. And
13 Exhibit 7 is the Excel spreadsheet of the child pornography
14 files from the time frame in question, October 7th to
15 December -- December 13th, 2017. Exhibit 8 is the
16 subscriber record from Frontier Communications with regard
17 to the IP address. However, we would note it does have the
18 DOJ subpoena attached to it that was not identified, so
19 we'd be happy to admit just the first two pages, which are
20 the fax cover sheet and the record itself, and we could
21 remove the DOJ subpoena from that.

22 THE COURT: Okay.

23 MS. TANGEMAN: Exhibits 9 through 25 are
24 photographs that were all authenticated as fair and
25 accurate. We would not be admitting and did not show

1 Exhibits 26 and 27. We would be admitting Exhibit 28,
2 which is portions of the defendant's interview. 29 would
3 not be admitted. That is a disk of the defendant's
4 interview in its entirety and is strictly for appellate
5 purposes. Exhibit 30 would be admitted, it is the
6 transcript of the portions of the defendant's interview.
7 Exhibit 31 would not be admitted. We are not moving for
8 its admission. It is the transcript of the defendant's
9 interview in its entirety, and is only for appellate
10 purposes. Exhibit 32 is not being offered and was not
11 shown. Exhibits 33 through 35 are not being admitted and
12 were not shown. Exhibit 36 would not be admitted. It was
13 shown to refresh recollection only. That's a report that
14 was shown to Detective Anschutz. We would move for
15 admission of Exhibits 37 through 39, which are the
16 electronic devices in this case containing the child
17 pornography, the Dell laptop, the Silicon Power Hard Drive,
18 and the 11 CDs and DVDs. And then, for the record, we do
19 have Exhibits 40 through 64 marked, which were the
20 individual clips from the portions of the interview. Those
21 were only added to the exhibit list in case they were
22 needed on cross-examination. They were not used, and so we
23 will not be moving for their admission.

24 THE COURT: Okay. And Mr. Wineman -- there being
25 no objection, the exhibits that are offered into evidence

1 will be admitted. Mr. Wineman?

2 MR. WINEMAN: Yes, Your Honor we'd like to move
3 for the admission of Defendant's Exhibits A, B and C, which
4 are documents obtained from the Missing and Exploited
5 Children Law Enforcement Services Portal, and the one
6 witness, I believe it was Mr. Howell, was questioned about
7 those and certain language contained in those.

8 THE COURT: Okay. There being no objection,
9 those will be admitted. I assume there's no objection?

10 MS. TANGEMAN: No objection, Your Honor. Thank
11 you.

12 THE COURT: Okay, they'll be admitted.

13 Okay, Deanna, you indicated that the -- counsel
14 have the proposed final instructions. Why don't you take
15 about 10, 15 minutes to go through those, should be pretty
16 brief. I mean, they're wrap-around boiler plate is my
17 standard, so take a look at the elements and then the new
18 material. Are there any changes or corrections that you're
19 aware of?

20 MR. WINEMAN: Not at this point, Your Honor.

21 THE COURT: I'm asking Deanna just in case
22 she's --

23 MR. WINEMAN: I'm sorry.

24 THE COURT: No problem.

25 COURTROOM DEPUTY: They haven't had an

1 opportunity to look at them yet.

2 THE COURT: That's what I'm saying. I think we
3 should take maybe 10, 15 -- I can't imagine, you take
4 whatever time you need and let me know and Deanna know when
5 you're ready to go, but is it fair to tell the jury maybe
6 another 15 minutes?

7 MS. TANGEMAN: I think that would be fine, Your
8 Honor.

9 One last thing, we do need to mark the
10 stipulation as a joint exhibit. It's stipulation number
11 one that was filed --

12 THE COURT: That's fine.

13 MS. TANGEMAN: -- on January 22nd of this year.

14 THE COURT: That's fine.

15 COURTROOM DEPUTY: Judge, they're going to need
16 more time than that --

17 THE COURT: Another half hour maybe.

18 COURTROOM DEPUTY: That would be good.

19 THE COURT: I can't imagine it's going to take
20 you actually 15 minutes to look at them, but do so --
21 obviously do so thoroughly. I would expect that they're in
22 good shape because it's basically a reprint, maybe some
23 slight revisions to prior charges.

24 MR. WINEMAN: Your Honor, we would like to renew
25 our Rule 29 motion. We believe that there is insufficient

1 evidence to go forward on any indication, either in the
2 case of the state in chief, and certainly considering the
3 testimony of the defendant was given to demonstrate that he
4 distributed child pornography on anyone.

5 THE COURT: Ms. Tangeman, I think that's quite
6 clear.

7 MS. TANGEMAN: Correct, Your Honor. We would
8 respond that the law does not require both, and it's made
9 clear in the jury instructions. The government is
10 proceeding on receipt of child pornography in the case.

11 THE COURT: And if that's not clear in the
12 instructions, why don't you just -- I can -- I can have
13 that segment deleted. I can certainly make it also clear,
14 or, you know, orally if that's as expeditious a way to do
15 it. Thank you. That motion will be granted.

16 MS. TANGEMAN: I'm sorry, did you mean that
17 motion will be denied?

18 THE COURT: No, in terms of that.

19 MS. TANGEMAN: The correction in the jury
20 instructions?

21 THE COURT: Pardon?

22 MS. TANGEMAN: You're not talking about the Rule
23 29?

24 THE COURT: No, I am in terms of any allegation
25 or suggestion about distribution.

1 MS. TANGEMAN: Thank you, just want to make that
2 clear. Just want to make the record clear.

3 THE COURT: And that's all Mr. Wineman was
4 asking, and it's entirely appropriate that he do so.

5 MR. WINEMAN: That's correct.

6 THE COURT: Let's go to work. Let's tell them
7 11:00, that's fine, and we should be adjourning about 11:30
8 then. Does that work for you guys?

9 MS. TANGEMAN: Yes.

10 THE COURT: That should give Deanna enough time
11 to print the instructions.

12 Any issues with regard to the instructions?

13 MS. TANGEMAN: Your Honor, I think the only issue
14 was the page that had either or to the defendant
15 testifying, and I understand that's been fixed.

16 THE COURT: All right. Good. We're a little
17 late getting them out of here by quarter of. Should take
18 just about that time. Deanna, you can go ahead and put
19 them on the chair or whatever; or, Jim, can you do that
20 while she's getting the jury to save us 90 seconds. Thank
21 you.

22 (Jury present in open court.)

23 THE COURT: Don't start reading until you follow
24 along with Deanna, you may mark them up. There's some
25 additional material, so, Deanna, if we'll get underway, if

1 you'll please read them the instructions.

2 COURTROOM DEPUTY: Number one --

3 THE COURT: Okay. May be a little later than
4 quarter of, I apologize. Go ahead, Deanna.

5 COURTROOM DEPUTY: Number one, Introduction.
6 These are the final jury instructions which you are to
7 follow in reach willing your verdict. I repeat many
8 instructions from those given at the outset of the trial;
9 some have variations. In addition, I have added other
10 instructions.

11 Regardless of what I told you in the initial
12 instructions, you must follow these final instructions.
13 You have copies of the instructions to read as I read the
14 instructions orally. Do not read ahead, as you must listen
15 carefully to everything I say. You can write on the
16 instructions if you wish. You may take them with you to
17 the jury room.

18 If I make changes in these instructions as I read
19 them to you, I will enter -- I will interlineate those
20 changes, and the version which I will send back to you is
21 the one you are to follow.

22 Number two, Juror's Duties. It is for you to
23 determine whether the government has proven its charge
24 against the defendant beyond a reasonable doubt.

25 You are to decide whether it has done so only on

1 the basis of the testimony -- the answers the witnesses
2 gave in response to questions asked of them -- you heard in
3 this courtroom and the exhibits and stipulations introduced
4 during the trial.

5 You must apply the instructions and the law as I
6 give them to you. This is so, even if you personally
7 disagree with an instruction or legal doctrine. Personal
8 beliefs can play no role whatsoever in your decisions.

9 The lawyers may discuss the law during their
10 closing arguments. If what they say about the law differs
11 from what I say, you must follow what I say. What I say
12 about the law controls.

13 All the instructions are important, and you
14 should consider them together as a whole.

15 Perform these duties fairly. Do not let any
16 bias, sympathy or prejudice that you feel toward one side
17 or the other influence your decision in any way.

18 Number three, Note Taking/Transcripts. You may
19 refer to your notes during deliberations. But do not let
20 the juror or jurors who may appear to have taken the best
21 notes control your decision or discussion. Each of you
22 must reach a determination based on your own understanding
23 of the evidence in light of the law that I have given you,
24 and, as well, on the understanding of the evidence and
25 views of your fellow jurors.

1 No single juror -- even if he or she may appear
2 to have taken comprehensive notes -- should control the
3 outcome.

4 Neither read backs nor transcripts of testimony
5 will be available for your consideration during
6 deliberations.

7 Number four, Presumption of Innocence; Burden of
8 Proof; Reasonable Doubt. The defendant has pled not guilty
9 to the crime charged in the indictment. An indictment is
10 not evidence; it is simply the formal notice to the
11 defendant of the charge against him. The mere fact of an
12 indictment cannot create in your minds even the slightest
13 suspicion of guilt.

14 The government has the burden to prove the charge
15 against the defendant beyond a reasonable doubt.

16 The defendant has no burden, or obligation, to
17 prove anything at all. He is presumed innocent. This
18 presumption of innocence stays with him until and unless
19 you have unanimously found, solely on the basis of the
20 evidence and law, that the government has met its burden of
21 proving the defendant guilty beyond a reasonable doubt.

22 Proof beyond a reasonable doubt means proof that
23 is so convincing that you would not hesitate to rely and
24 act on it in making the most important decisions in your
25 own lives.

1 Proof beyond a reasonable doubt does not mean
2 proof to an absolute certainty or all possible doubt.
3 Possible doubts and doubts based only on speculation are
4 not reasonable doubts. A reasonable doubt is a doubt based
5 on reason and common sense. It may arise from the
6 evidence, the lack of evidence, or the nature of the
7 evidence.

8 If the government fails to meet its burden of
9 proof, you must return a verdict of not guilty. This is so
10 even if you think or feel that the defendant may be guilty.
11 If you only think or feel he may be guilty of a charge, the
12 government has not met its burden of proof.

13 If you are convinced that the government has
14 proved the defendant guilty beyond a reasonable doubt,
15 return a verdict of guilty. Otherwise you must return a
16 verdict of not guilty. If you find that the evidence in
17 this case could not reasonably support either of two
18 conclusions, one of guilt, the other of nonguilt, you must
19 return a verdict of not guilty.

20 MS. TANGEMAN: Excuse me, Your Honor. I believe
21 that was just accidentally read could not reasonably
22 support; it should be read could reasonably support.

23 THE COURT: Okay.

24 MS. TANGEMAN: Just wanted to note that.

25 THE COURT: If you'll mark your copy and

1 likewise. Ladies and gentlemen, if you'll mark your copy.

2 COURTROOM DEPUTY: I think I just read it wrong,
3 Judge.

4 THE COURT: Oh, you read it wrong.

5 COURTROOM DEPUTY: Number five, Evidence;
6 Objections. You must make your decision based only on the
7 evidence that you heard here in court -- here in court and
8 the exhibits and stipulations that were introduced into
9 evidence.

10 Do not let anything else influence your decision
11 in any way.

12 Sometimes the lawyers have objected to questions,
13 answers, or exhibits because they believed that the rules
14 of evidence do not permit the particular question, answer
15 or exhibit to be heard, seen or considered by you.

16 Do not hold the fact that the lawyers objected
17 against them or their clients. The lawyer was not trying
18 to conceal something; he or she was simply trying to make
19 sure that the law was followed and the trial is fair.

20 If I sustained an objection, you must disregard
21 the particular question, answer, or exhibit entirely. Do
22 not wonder why the objection was made or what you might
23 have learned had I not sustained the objection.

24 Likewise, do not speculate about what a witness
25 who was not called to testify might have said, or what else

1 a witness who did testify might have said, had he or she
2 been asked additional questions.

3 Something that you did not hear or see, were not
4 permitted by me to hear or see, or were told to disregard
5 is not evidence.

6 Lawyers' statements, objections, and arguments
7 are not evidence.

8 Likewise, the lawyer's questions are not
9 evidence; the evidence is, rather, what the witnesses --
10 what the witnesses have said in response to the lawyers'
11 questions.

12 Questions I might have asked of the witnesses are
13 not evidence; the evidence is, rather, what the witnesses
14 say in response to my questions, as it is with regard to
15 the lawyers' questions.

16 My legal rulings are not evidence. They are
17 simply rulings on the law which you must accept and follow.

18 Anything I told you to disregard during the trial
19 is not evidence.

20 Make your decision based only on the evidence, as
21 I have defined it here, and nothing else.

22 Number six, Direct and Circumstantial Evidence.
23 Evidence consists generally of two types; direct evidence
24 and circumstantial evidence.

25 You can consider each type of evidence.

1 Direct evidence is simply evidence -- like the
2 testimony of an eye witness -- which, if you believe it,
3 directly proves a fact. A witness' statement that he saw
4 rain is direct evidence that it was raining, and you could
5 find that it was raining if you believed the witness'
6 statement.

7 Circumstantial evidence indirectly proves a fact.
8 If someone walked into the courtroom wearing a raincoat
9 covered with drops of water and carrying a wet umbrella,
10 that would be circumstantial evidence from which you could
11 conclude that it was raining.

12 It is for you to decide how much weight to give
13 the evidence. The law makes no distinction between the
14 weight you should -- should or can give to either one, nor
15 is one any better evidence than the other.

16 You are to consider all the evidence, both direct
17 and circumstantial, and give it whatever weight you believe
18 it deserves.

19 Number seven, Opinion Testimony. Ordinarily, a
20 witness cannot give his or her opinion; instead, a witness
21 can only testify about facts within his or her personal
22 knowledge.

23 Under some circumstances, a witness who has
24 special knowledge, training, or experience beyond that
25 usually possessed by jurors can present opinion testimony.

1 You do not have to accept opinion testimony or
2 find it conclusive as to the particular subject matter.

3 In deciding what weight to give to opinion
4 testimony, consider how well qualified the witness was to
5 give the opinion and the basis on which he or she reached
6 the opinion.

7 In addition, apply the same considerations you
8 apply to the testimony of other witnesses in determining
9 how credible they are and how much weight to give their
10 testimony.

11 Number eight, Credibility of Witnesses. You
12 alone -- you alone decide how credible or believable each
13 witness is, and how much weight to give the testimony of
14 each of the witnesses. You can believe everything that a
15 witness said, or only part of it, or none of it at all.
16 But you must act reasonably and carefully in making these
17 decisions.

18 Some of the things you may consider in evaluating
19 the credibility of weight of a witness's testimony are:

20 Was the witness able to see and hear clearly, or
21 was the witness's ability to see and hear impaired. Was
22 there anything that may have affected the witness's ability
23 to perceive or remember what he or she tells you.

24 How good the witness's memory seemed to be: Was
25 the witness able to remember accurately what happened.

1 How did the witness act while testifying. Did he
2 or she look like he or she was testifying truthfully.

3 Did the witness have any relationship to the
4 government or the defendant or anything or anyone, or
5 anything to gain or lose from the case, that might
6 influence his or her testimony.

7 Did the witness have any bias, prejudice, or
8 other reason for testifying that might cause the witness to
9 testify untruthfully.

10 Did the witness at any time -- whether during his
11 or her testimony or at some other time or times, say or do
12 something different from or inconsistent with his or her
13 testimony.

14 How believable was the witness's testimony in
15 light of all the other evidence: Was the witness's
16 testimony supported or contradicted by other evidence you
17 found believable. If contradicted, what was the reason for
18 the contradictions.

19 These are among the things you may consider in
20 deciding how believable each witness was. You may consider
21 other things that you think shed some light on the
22 witness's believability.

23 In deciding which witness to believe and how much
24 weight to give to their evidence, use your common sense and
25 your everyday experience in dealing with other people.

1 Then decide what testimony you believe, and how much weight
2 you think it deserves. If your experience tells you that
3 certain evidence reasonably leads to a conclusion, you are
4 free to reach that conclusion.

5 Number nine, Summaries and Other Materials Not
6 Admitted in Evidence. During the trial you have seen
7 counsel use summaries, charts, drawings, calculations, or
8 similar materials that were offered to assist in the
9 presentation and undertaking of the evidence -- or I'm
10 sorry, understanding of the evidence. This material is not
11 itself evidence and must not be considered as proof of any
12 acts.

13 Number ten, Number of Witnesses. Do not make any
14 decisions based only on the number of witnesses who
15 testified about a particular fact or circumstance. What is
16 more important is how believable the witnesses are, and how
17 much weight you think their testimony deserves.

18 Number 11, Outside Sources. You cannot try to
19 find out information from other sources, such as
20 dictionaries, books, news accounts (though there won't be
21 any of those, in all likelihood), from the internet, social
22 media, or otherwise from anyone or anywhere else other than
23 the courtroom.

24 This is so for at least three reasons.

25 First, through the rules of evidence, the law

1 controls what jurors can learn. This is so, so that, to
2 the maximum extent possible, what you learn is likely to be
3 reliable and accurate.

4 Second, the lawyers and parties are entitled to
5 be aware of everything that you will be considering when
6 you deliberate on and reach your verdict.

7 If you could look for information outside the
8 courtroom, the lawyers and defendant would have no way of
9 knowing what you might have learned. They could not
10 respond to or comment on it. They could not call your
11 attention to reasons for you to disregard such information.

12 Moreover, for you to learn and consider something
13 from outside the evidence, you would deprive the defendant
14 of his constitutional right to confront the witnesses
15 against him.

16 Third, I would not be able to tell you what you
17 can and cannot consider, which is one of the most -- one of
18 my most fundamental duties as a judge.

19 You must follow my instructions as to what you
20 can and cannot consider. Failure to do so would violate
21 your oath and deprive the parties of the fair trial to
22 which they are entitled.

23 Number 12, Court's Rulings and Other Actions.
24 Nothing that I have said or done during the trial was meant
25 to influence your decision in any way.

1 Do not interpret my rulings or the lawyers'
2 objections as any indication of how I think the case should
3 be decided. My rulings will be based on the law and rules
4 of evidence, not on how I feel about the case.

5 Likewise, do not speculate on how I think the
6 case should come out. My views are not evidence, and, to
7 the extent that you think I have any view or opinion, you
8 must disregard those thoughts entirely.

9 We each have separate duties in a trial. It is
10 your duty -- and yours alone -- to decide the facts and
11 determine whether the government has met its burden of
12 proving the defendant guilty of the crime charged in the
13 indictment.

14 Number 13, Punishment. You must consider whether
15 the government has met its burden of proving the defendant
16 guilty beyond a reasonable doubt completely without regard
17 to what punishment the law may require and I may impose as
18 a result of a guilty finding.

19 It is my job, not yours, to determine punishment,
20 and I can do so only after you -- without any consideration
21 of what I might do -- have found the defendant guilty
22 beyond a reasonable doubt.

23 Do not speculate about what sorts of punishment
24 I -- punishment I might impose pose if you return a guilty
25 verdict. Such speculation is not evidence, and you cannot

1 consider any such speculation in reaching your verdict.

2 Number 14, General Instructions Concluded. This
3 completes the instructions as to your general duties. I
4 will now instruct you on the elements of the crime that the
5 defendant is accused of committing.

6 The defendant is only on trial for the crime
7 charged in the indictment.

8 Your job is limited to deciding whether the
9 government has proven beyond a reasonable doubt that the
10 defendant is guilty of the crime charged in the indictment.

11 Element -- Number 15, Elements of this -- of
12 the -- Elements of Offense -- Receipt and Distribution of
13 Child Pornography. Defendant Karl J. Rogers is charged
14 with one count of receipt and distribution of visual
15 depictions of minors engaged in sexually explicit conduct.

16 You can -- you can find the defendant guilty only
17 if all twelve of you are convinced beyond a reasonable
18 doubt that the government has proven the following
19 elements:

20 One, the defendant knowingly received or
21 distributed a visual depiction;

22 Two, the production of the visual depiction
23 involved the use of a real minor engaging in sexually
24 explicit conduct;

25 Three, the visual depiction was of a minor

1 engaging in sexually explicit conduct;

2 Four, the defendant knew that: A, at least one
3 of the individuals in the visual depiction was a minor;
4 and, B, the visual depiction was of such minor engaged in
5 sexually explicit conduct; and.

6 Five, the visual depict was received or
7 distributed using a means or facility of interstate or
8 foreign commerce, including a computer.

9 Number 16, Definitions. As used in the
10 applicable statute, the following terms have the indicated
11 meanings:

12 An act is done "knowingly" when it is done
13 voluntarily and intentionally and not because of accident,
14 mistake, or some other innocent reason.

15 To "receive" a visual depiction means to take
16 possession of it. This includes the knowing acceptance of
17 a depiction previously requested. Receiving includes the
18 downloading of a photograph or video by means of the
19 internet.

20 "Distribution" includes knowingly allowing
21 electronic access to a visual depiction stored on one's
22 computer and then downloaded by another person and posting
23 the depiction on a website for public viewing.

24 "Visual depiction" includes any photograph,
25 image, film, video or picture, including undeveloped film

1 or videotape -- and videotape, and data stored on computer
2 disk or by electronic means which is capable of conversion
3 into a visual image, whether or not stored in permanent
4 format.

5 "Means or facility of interstate commerce"
6 includes the internet or the telephone.

7 "Computer" means any electronic, magnetic,
8 optical, electrochemical, or other high speed data
9 processing device performing logical, arithmetic, or
10 storage functions, and includes any data storage facility
11 or communications facility directly related to or operating
12 in conjunction with such device, but such term does not
13 include an automated typewriter or typesetter, a portable
14 hand held calculator or other similar device.

15 "Minor" means any person under the age of 18
16 years.

17 "Sexually explicit conduct" means actual or
18 simulated: Sexual intercourse including genital to
19 genital, oral to genital, anal to genital, or oral to anal,
20 whether between persons of the same or opposite sex;
21 bestiality; masturbation; sadistic or masochistic abuse; or
22 lascivious exhibition of the genitals or pubic area of any
23 person.

24 The government is not required to prove that the
25 defendant was involved in any way in the production of the

1 visual depictions.

2 The government is not required to prove that the
3 defendant knew that a means or facility of interstate
4 commerce had been or would be used when he received or
5 distributed the visual depictions.

6 Number 17, Lascivious Exhibition-Defined. As
7 mentioned, "sexually explicit conduct" may include
8 "lascivious exhibition of genitals or pubic area of any
9 person."

10 Not every exposure of the genitals or pubic area
11 constitutes lascivious exhibition. Whether a picture or
12 image of the genitals or pubic area constitutes -- I'm
13 sorry, constitutes such a lascivious exhibition requires
14 that you consider -- consider of the overall content of the
15 material.

16 To determine whether a particular visual
17 depiction constitutes a lascivious exhibition, you may
18 consider the following factors:

19 Whether the focal point of the picture or image
20 is on the child's genitals or pubic area;

21 Whether the setting of the picture or image is
22 sexually suggestive, that is, in a place or pose generally
23 associated with sexual activity;

24 Whether the child is depicted in an unnatural
25 pose or in inappropriate attire, considering the age of the

1 child;

2 Whether the child is fully or partially clothed,
3 or nude;

4 Whether the visual depiction suggests sexual
5 coyness or a willingness to engage in sexual activity; and

6 Whether the visual depiction is intended or
7 designed to elicit a sexual response in the viewer.

8 This list is not exhaustive, and an image need
9 not satisfy any single factor to be determined lascivious.
10 Instead, you must determine whether the visual depiction is
11 lascivious based on its overall content. It is for you to
12 decide the weight or lack of weight to be given any of
13 these factors.

14 Number 18, Stipulation as to the "Minor" Element.
15 As mentioned previously, the government must prove that the
16 pornographic images in this case depicted real children
17 under the age of 18 years.

18 The parties have stipulated that the persons
19 depicted in the images and videos are actual persons under
20 the age of 18 years of age when the images and videos were
21 created.

22 Therefore, the government need not offer any
23 other evidence as to the age of those persons. For
24 purposes of your deliberations, the fact is established
25 beyond a reasonable doubt.

1 Number 19, Inferring Required Mental State.

2 Ordinarily, there is no way that a defendant's mental state
3 can be proved directly, because no one can read another
4 person's mind and tell what the -- that person is thinking.

5 But a defendant's state of mind can be proved
6 indirectly from the surrounding circumstances. This
7 includes things that -- things like what the defendant
8 said, what the defendant did, how the defendant acted, and
9 any other facts or circumstances in evidence that show what
10 was in the defendant's mind.

11 You may also consider the natural and probable
12 results of any acts that the defendant knowingly did, and
13 whether it is reasonable to conclude that the defendant
14 intended those results.

15 This, of course, is all for you to decide.

16 Number 20, On or About. The indictment charges
17 that the crime happened from "on or about" October 7, 2017,
18 to "on or about" December 13, 2017. The government does
19 not have to prove that the crime happened on those exact
20 dates. But the government must prove that the crime
21 happened reasonably close to those dates.

22 Number 21, Defendant's Testimony. You have heard
23 the defendant testify. Earlier, I talked to you about the
24 "credibility" or "believability" of the witnesses. And I
25 suggested some things for you to consider in evaluating

1 each witness's testimony.

2 You should consider those same things in
3 evaluating the defendant's testimony.

4 Number 22, Defendant's Other Acts. You have
5 heard testimony that the defendant committed acts other
6 than those -- other than the ones charged in the
7 indictment. If you find that defendant did those acts, you
8 can consider the evidence only as it relates to the
9 government's claim on the defendant's intent, motive,
10 opportunity, plan, knowledge, identity, absence of mistake,
11 absence of accident. You must not consider it for any
12 other purpose.

13 Remember that the defendant is on trial here only
14 for receipt or distribution of child pornography, not for
15 the other acts. Do not return a guilty verdict unless the
16 government proves the crime charged in the indictment
17 beyond a reasonable doubt.

18 23, Character and Reputation Evidence of the
19 Defendant. You have heard testimony about the defendant's
20 good character. You should consider this testimony, along
21 with all the other evidence, in deciding if the government
22 has proved beyond a reasonable doubt that he committed the
23 crime charged.

24 Number 24, Unanimous Verdict. Your verdict,
25 whether it is guilty or not guilty, must be unanimous.

1 To find the defendant guilty, every one of you
2 must agree that the government has overcome the presumption
3 of innocence with evidence that proves his guilt beyond a
4 reasonable doubt.

5 To find him not guilty, every one of you must
6 agree that the government has failed to convince you beyond
7 a reasonable doubt.

8 Either way, guilty or not guilty, your verdict
9 must be unanimous.

10 Unanimity Not Required-Means. One more important
11 point the requirement that your verdict must be unanimous.
12 The -- I'm sorry, one more point about the requirement that
13 your verdict must be unanimous.

14 The indictment accuses the defendant of
15 committing the crime of receipt and distribution of child
16 pornography.

17 The government does not have to prove that the
18 defendant both received and distributed child pornography
19 for you to return a guilty verdict on the charge. Proof
20 beyond a reasonable doubt of either way is enough.

21 In order to return a guilty verdict, all twelve
22 of you must agree that at least one of these has been
23 proved; however, all of you need not agree that the same
24 one has been proved.

25 26, Closing Argument. Next you will hear the

1 closing arguments of counsel.

2 I remind you that the closing arguments of
3 counsel are not evidence. They are counsels' expression of
4 their view of the evidence and how they believe you should
5 interpret it in light of these instructions.

6 Because the government has the burden of proof,
7 its attorney will present closing argument first. Next,
8 the defendant's attorney will present his closing argument.
9 The government will conclude with its final, or rebuttal,
10 argument.

11 After the attorneys have presented their closing
12 arguments, I will instruct you as to how you are to conduct
13 your deliberations.

14 THE COURT: Okay. Ladies and gentlemen -- what
15 time is it? About quarter of? Good. Looks like we're
16 right on time. Why don't you just leave the instructions
17 on the chair. We'll adjourn for lunch. We'll resume at
18 1:30. As Deanna indicated, we'll have the closing
19 statements by counsel. I imagine together take half hour,
20 45 minutes, and then the case will be in your hands, and
21 the time table will be yours to set. At that point you can
22 begin deliberations, if you desire, or you simply wish to
23 adjourn for the day. It's totally up to you. And as I
24 say, the schedule is up to you. So okay. If you can be
25 back by 1:30, if there's any problem getting back, that's

1 fine. Obviously we'll wait for you.

2 Don't talk about the case. Keep an open mind.

3 Don't have anything to do with any of us who have anything
4 to do with the case. Thank you.

5 (Jury excused.)

6 THE COURT: Counsel, why don't you approach?

7 (A side bar conference was had on the
8 record.)

9 THE COURT: Okay. I gather there's no objections
10 to the jury instructions?

11 MR. WINEMAN: No.

12 MS. TANGEMAN: No, Your Honor.

13 THE COURT: Okay. Good. Thank you. I'll be
14 very candid with you, odd situation, something that the
15 government in particular may well want to brief either --
16 sometime prior to sentencing. I think he deserves
17 acceptance, just -- at trial and general rule don't get
18 acceptance of responsibility when you go to trial. On the
19 other hand, I'll be very honest -- candid with you, I think
20 that sure as hell beats what we usually hear. I made a few
21 mistakes, Your Honor. Guy's criminal history category's
22 six and he's in here for felon in possession or is holding
23 up a Jimmie John's or whatever, I made a few mistakes. And
24 I just want you guys to know that. If you want me now -- I
25 think, quite candidly, I think it's a fair question for us

1 to know why did he take the stand. My instinct is, you
2 know, it's simply mea culpa, that he felt the sense of the
3 wrongness of what he did, he actually wanted it on public
4 display that -- and he wanted publicly to acknowledge it,
5 and that's an odd and peculiar -- but now I understand why
6 you went to trial.

7 MR. WINEMAN: I'd emphasize the agents kind of
8 did him a favor because he hit bottom. You know, he -- and
9 now he understands having accepted the fact that he's got
10 that.

11 THE COURT: Deal with it --

12 MR. WINEMAN: -- addiction that he's going to
13 have to deal with.

14 THE COURT: I'm just saying --

15 MS. TANGEMAN: And you're not talking about all
16 three points. You're talking about the parts that just
17 would -- maybe two of those points, for example, or one? I
18 think there's one point that involves that -- there's also
19 the other that goes to the government having to spend
20 resources in a timely fashion.

21 THE COURT: That's fair, Tracy.

22 MS. TANGEMAN: Thank you. I think you're right,
23 that's an issue that needs to be briefed.

24 THE COURT: Have you heard anybody as
25 truthfully --

1 MS. TANGEMAN: I have not in 20 years.

2 THE COURT: -- in public admit it's wrong? And
3 he didn't say I'm sorry, but, you know, I -- I'm just
4 astonished.

5 MS. TANGEMAN: I also don't think he said it was
6 wrong, but I agree with The Court that he --

7 THE COURT: That's the subtext.

8 MS. TANGEMAN: -- that he admitted to the
9 receipt, correct.

10 THE COURT: From the get go. So now I understand
11 why he went to trial. And that's right, the one point I
12 just can't give that.

13 The other thing, Tracey, I really don't want to
14 have him taken -- I know that's the statute, but, my God,
15 think about it.

16 MS. TANGEMAN: We'll look into it. We'll do some
17 research on it.

18 THE COURT: I know it's the statute. I've done
19 it before, and I just -- he's got his dad. Can you imagine
20 a father coming in here, that's happened before --

21 MS. TANGEMAN: It has.

22 THE COURT: -- and a brother and --

23 MS. TANGEMAN: That's happened too.

24 THE COURT: Just -- so I want to let you know, I
25 gather you're not going to contest that issue, but, if

1 anything, I want to put you on notice on it.

2 MS. TANGEMAN: Correct, I'd like to look into it
3 before we make a formal position.

4 THE COURT: I agree, but obviously I don't think
5 at this point -- you're right about the two points. I
6 didn't -- you know --

7 MS. TANGEMAN: I'll look into it.

8 THE COURT: Good. Thanks.

9 (Side bar concluded.)

10 THE COURT: Okay. We'll be in recess until 1:30.
11 Thanks, folks.

12 (A brief recess was taken for lunch.)

13 THE COURT: I understand that you've been ready
14 to begin your deliberations, and that's great. Apologize
15 the fact that we were dispersed in one place or another,
16 and I apologize for that.

17 The -- it's my understanding that you indicated
18 to Deanna you had sort of a preliminary question as to the
19 issue of distribution. It's out of the case totally.
20 There's no -- although that was in the boiler plate, I
21 should have deleted it. The only issue is receipt. So you
22 can just treat that issue as a nonissue. And, in fact, it
23 should have never been in the case because there was no
24 evidence of distribution, which means obviously sharing
25 something, providing something, let somebody else see

1 something. And the parties agreed at the close of the
2 evidence, out of your presence, that I could properly
3 dismiss that allegation because it's not there. If you
4 have any questions about that, go back and let me know
5 further. There's a concluding bit of instruction that
6 Deanna will read to you, and then you may retire to the
7 jury room.

8 COURTROOM DEPUTY: Do you want me to read this
9 first or closing?

10 THE COURT: Oh, no, you -- that's right, we'll
11 hold on to that. Just hold on to those verdict forms,
12 okay. Before sending you out, we, of course, have to have
13 closing arguments. The government, because it has the
14 burden of proof, goes first, and it has the opportunity too
15 for rebuttal argument if it chooses, and then the defendant
16 goes second because the defendant doesn't have to prove
17 anything.

18 Go ahead, Mr. Simko or Ms. Tangeman.

19 MR. SIMKO: Thank you, Your Honor. Again, may it
20 please The Court, Mr. Wineman, ladies and gentlemen of the
21 jury. This is closing statements, and this is last time I
22 get to talk to you.

23 First, let me thank you for your jury service. I
24 know that some of you have come from a ways away,
25 especially early in the morning. And while this has been a

1 short trial, three days can be disruptive to your lives.
2 And while the trial was short, I think it was difficult.
3 You got to see some pretty intense evidence in this case.
4 But I hope, as citizens, all of us, I think, hope that
5 you'll find this process rewarding.

6 I said in opening statement yesterday that child
7 pornography is the rape of children, both literally and
8 figuratively. And what you saw on your screens yesterday
9 was the literal rape of children. And you have the
10 defendant's stipulation that those individuals that you saw
11 were real, real children. And we also have, through
12 defense exhibits, actually, and through the testimony of
13 Investigator Howell, that some of these individuals have
14 been identified, that they are real people out there that
15 were in those videos.

16 Make no mistake, law enforcement spends
17 considerable resources tracking down individuals in those
18 videos and prosecuting them for what they did to those
19 children in the videos. But each time these videos are
20 sought out, downloaded, viewed, received, that is the
21 figurative rape of these children all over again. Child
22 pornography is about supply and demand. The downloader is
23 an integral part of the crime, so we don't end with the
24 prosecuting of those who supply the videos and hold those
25 people that are demanding them to account as well.

1 I'm going to go through essentially the
2 investigation a little bit, the evidence, the indictment,
3 and how the evidence is going to fit into each of these
4 elements.

5 The investigation. There's the tool out there
6 that monitors these dark websites, let's us know when
7 somebody is downloading child pornography. We did get
8 notice that a particular IP address was downloading child
9 pornography. We were able to identify and link that
10 address to Karl J. Rogers, as the subscriber, and we were
11 able to locate his physical address. We presented that
12 information to a judge who issued a warrant to search his
13 home and electronics for the presence of child pornography.
14 We seized computers, hard drives, disks, and then we
15 searched and seized them -- searched them forensically.
16 The defendant was interviewed. He made admissions, videos
17 and images were identified ultimately as child pornography.
18 That was basically the investigation.

19 The evidence in this case. There was both
20 circumstantial and direct evidence. Sometimes
21 circumstantial evidence alone can prove somebody's guilt
22 beyond a reasonable doubt. But in this case, the
23 circumstantial evidence, while it doesn't prove beyond a
24 reasonable doubt necessarily that defendant is guilty of
25 this crime, it supports the direct evidence that he is

1 guilty of this crime. So the files identified in the
2 search warrant are not guilt in and of themselves, but they
3 do provide us with information in this case that is that
4 the defendant was downloading, and he was downloading child
5 pornography from these websites. His possession or having
6 these programs BleachBit, Eraser, TrueCrypt, and then the
7 actual search programs TOR and Freenet, they in and of
8 themselves are not guilt. These programs, none of them are
9 illegal to have, but they are indicative of the child
10 pornography or a child pornographer's activity. So the
11 BleachBit allows you to get rid of stuff on your computer.
12 It's not illegal, but it's consistent with somebody who's
13 downloading child pornography. Same thing with Eraser.
14 And when you heard testimony earlier yesterday that those
15 three files that with located through the search warrant we
16 couldn't find them on his computer, well we -- we had that
17 testimony for you that he had been running these programs,
18 Eraser and BleachBit over the -- just a few days prior to
19 us getting there, two months earlier, more than two months
20 earlier when we initially saw these files being downloaded
21 into the computer. So he could have used those programs to
22 essentially take them off his computer. He also has that
23 program TrueCrypt, which essentially is like a safe inside
24 the computer. You can put files behind this TrueCrypt
25 program and we can't get to them. Now, we were able to get

1 into two of the areas that he had encrypted, two of these
2 containers, as we called them, and we were able to find
3 quite a bit of child pornography there. But as the
4 investigator testified, we couldn't get into all of those,
5 so it could be in this red laptop that those files still
6 exist, we just couldn't get to them. But, again, we're not
7 here for those three files that allowed us to search the
8 property. We're ultimately here for the pornography that
9 was found.

10 Last, the sex toys and the kid's underwear.
11 Again, that is not illegal to own sex toys. It's not
12 illegal to have kid's underwear. But it's indicative in
13 this case of child pornography that he had on his computer
14 and his interest in. And here the sex toys and the child's
15 underwear were located very near the actual child
16 pornography itself. So this laptop was in his computer
17 that had the child pornography on it, and we had the sex
18 toys along with it, essentially, right on top of it if you
19 look at those photographs. In that box itself we have the
20 hard drive with the child pornography in it, and we have
21 the children's underwear inside, so sort of close by. And
22 what's that's not necessarily illegal to have those items,
23 it is circumstantial evidence of the defendant's guilt.

24 The direct evidence in this case are the actual
25 videos and photographs we identified on his computer.

1 3,732 images of child pornography and 1,947 videos. Those
2 were found on his laptops, and they had to be downloaded
3 from the internet. 116 of those images and videos were
4 downloaded in the period of October 7th, 2017 through
5 December 13th, 2017. As we stated in the instructions and
6 stated in the indictment, that's our indictment period. So
7 we were able to -- we wanted to isolate those for you so
8 you could see in the actual indictment period there's
9 files, these child pornography, these child abuse material
10 is being downloaded in that period of time to cover
11 that element.

12 And then of course you have defendant's
13 statements themselves, both at the scene with the
14 interview -- with the investigators and actually here in
15 trial. Those were all direct evidence of the defendant's
16 guilt. All right.

17 The indictment. There's one count. And it is
18 receipt and/or distribution of child pornography, that's
19 the title of the charge. That's not the actual
20 definitions, we break it up down below, but if we were to
21 look it up in the book that's the title of the charge,
22 that's not actually what we have to prove of in and of
23 itself. That's where we get the and/or. These are the
24 different elements we have to prove, and, again, they're
25 all listed and defined for you in the instructions that you

1 have. But that on or about October 7th, 2017 to on or
2 about December 13, 2017, we have to prove that the crime
3 happened around, within that time period or reasonably
4 close to that time period.

5 Then the defendant knowingly received or
6 distributed -- distributed a visual depiction, production
7 of the visual depiction involved the use of a real minor,
8 visual depiction was of a minor engaging in sexually
9 explicit conduct, that the defendant knew that at least one
10 of the individuals in such visual depiction was a minor,
11 and knew that the visual depiction was of such minor
12 engaging in sexually explicit conduct, and that such visual
13 depiction was received or distributed using the means or
14 facility of interstate or foreign commerce, which is going
15 to include a computer.

16 So taking all these elements sort of in turn, so
17 on or about October 7th, 2017, to on or about
18 December 13th, 2017, first in this case you have the
19 defendant's own statements. When they were questioning him
20 in the interview period, they were asking him, you know,
21 how recently had you done this. And he said I had used
22 that TOR program a couple days before you got here, just
23 this past weekend, which is about a couple days, and then I
24 used the Freenet program a couple weeks earlier.

25 Now, we were also able to use our forensic

1 analysis to figure out he actually used it a little more
2 recently than that, the Freenet program, but it wasn't too
3 much earlier than the FBI getting there. So he had used
4 those programs within that period of time.

5 Also, as I indicated earlier, we were able to
6 isolate 116 images and videos that qualified as that child
7 abuse material, and all of those were downloaded within
8 that time frame.

9 Also, I'll indicate to you we have to prove that
10 the -- this happened within the Northern District of Ohio.
11 You heard testimony that Willard, Ohio is in the Northern
12 District, and that's why we're here in this courtroom as
13 opposed to somewhere in Southern Ohio or Michigan or
14 somewhere like that.

15 All right. The defendant acted knowingly. Now,
16 knowingly is important in every case, mens rea, as we call
17 it in law, how somebody came to do a particular act. The
18 Judge has instructed you that an act is done knowingly when
19 it is done voluntarily and intentionally and not because of
20 accident, mistake or some other innocent reason. And to
21 further break that out, I'll tell you that, you know, we're
22 not expecting you to be mind readers, right. We can't look
23 into the mind of another, so we have to look at the sort of
24 the circumstances around what they do in order to figure
25 out did they act knowingly or not. And in this case, you

1 have the defendant's statements that he had been doing this
2 for quite a long time, all the way back as far as high
3 school. That he and the digital forensics prove that he
4 had been downloading this stuff for quite a period of time,
5 had different dates on which these things were downloaded
6 over quite a long period of time. That he has gone out and
7 sought these TrueCrypt and BleachBit programs which further
8 supports he acted knowingly. That he went out and was
9 using these dark web web sites. He didn't find this
10 stuff -- as they indicated, you can't find this stuff on
11 Google, it wasn't an accident something you would stumble
12 into. You have to take several steps in order to get to
13 this type of stuff. To get to TOR, to download TOR, to
14 start up those browsers you have to go through several
15 steps before you can even get there even before you try to
16 find the child pornography. All this goes to help prove
17 the element of knowingly.

18 Defendant knowingly received or distributed a
19 visual depiction. Here's the definition in your
20 instructions for received. To receive a visual depiction
21 means to take possession of it, that includes the
22 knowingly -- knowing acceptance of a depiction previously
23 requested, and then here it says receiving includes the
24 downloading of a photograph or video by means of the
25 internet. You download something, it's here in the

1 instructions, that's another way of saying receiving. And
2 he did say he downloaded it, these images, so he did
3 receive these images as far as that definition is
4 concerned.

5 And here's what we kind of got caught up with a
6 couple times in this case, especially with defendant's
7 testimony, and that is it's received or distributed.
8 There's an or in there. We don't have to prove one or the
9 other. Either one will do. And as you heard The Judge say
10 here, there's actually no evidence of distribution. We
11 have not brought any evidence of that. We don't have any
12 evidence of that. But we can prove -- we've focused our
13 case and our evidence on receiving. And as long as the
14 defendant has received pornography, as long as he has
15 downloaded child pornography, that is sufficient for this
16 element. And then of course defendant knowingly received
17 or distributed a visual depiction. Sometimes that's -- we
18 define a lot of things in the law. Visual depictions would
19 be all those things you saw on your screen yesterday, any
20 image or video. We do have a definition of it here.
21 Visual depiction includes any video or picture, including
22 data stored on a computer disk or by electronic means which
23 is capable of conversion into a visual image. Whether or
24 not stored in permanent format, this gets --

25 THE COURT REPORTER: I'm sorry, I can't hear you.

1 MR. SIMKO: These are technically ones and zeros
2 you know, binary codes that are in the computer somewhere,
3 no, they actually are images and they come up on there, and
4 those all qualify. There is no technical reason why you
5 wouldn't call it a visual image. These are all visual
6 images.

7 Production of visual depiction involved the use
8 of a real minor. Term minor means any person under the age
9 of 18 years. You heard the defendant say that he
10 considered child pornography to be anything under 10 years.
11 His definition doesn't matter. It's what's under the law.
12 Anybody under 18 years is going to qualify.

13 Here we have the stipulation that the individuals
14 you saw on your screen yesterday and all of the child
15 pornography that we have presented to you, the thousands of
16 images and videos, are all real minors. You can consider
17 this element as proved per the stipulation.

18 The visual depiction was of a minor engaging in
19 sexually explicit conduct. Here we define what is sexually
20 explicit conduct. Sexual intercourse, including genital to
21 genital, oral to genital, anal to genital, or oral to anal,
22 whether between persons of the same sex or opposite sex,
23 has to include a minor, bestiality, masturbation, sadistic
24 or masochistic abuse, or lascivious exhibition of the
25 genitals or pubic area of any person.

1 Now, you're going to have -- first of all, you
2 have the testimony of -- well, first of all, you have your
3 own viewing of those images, you saw young children,
4 sometimes infants, involved in sexual acts. You were able
5 to see those for yourself. But you also have testimony of
6 Jason Howell, who went through every single image. He had
7 to view those and classify them based on his training
8 whether or not those would be child pornography, whether or
9 not those would have this type of conduct within them. And
10 he did. He went through and did that for you. State's
11 Exhibit -- I'm sorry, Government's Exhibit 5 is actually
12 his report, which kind of breaks that out. You can go in
13 the forensic report if you want to look at all the
14 thousands of images in that large spreadsheet, you can
15 certainly do so. There's also the report that kind of
16 breaks that out for you. And in here when he's talking
17 about videos and images, he checks off there are each of
18 these categories within the thousands of images and videos.
19 There is sexual intercourse, which you saw yesterday,
20 plenty of those videos, there is bestiality in these
21 pornographic videos, there's masturbation, sadistic or
22 masochistic abuse. Those types of images are in this group
23 of pornography that was found on the defendant's computer,
24 his hard drives. And we've broken that out for you here.
25 But just one would qualify, here we have thousands. And

1 also, as I point out there, not only is there thousands
2 overall, but they're -- even in a time period there's over
3 100, 116 to be exact.

4 The defendant knew that at least one of the
5 individuals in such visual depiction was a minor, and knew
6 that the visual depiction was of such minor engaged in
7 sexually explicit conduct. You have the stipulation, of
8 course, that the defendant has agreed that all these images
9 were, in fact, minors. You have the representative sample
10 that you had to view yesterday. You can see for your own
11 self that these children in here were not only just young,
12 but very young, infants at times. You had investigator
13 Jason Howell's report that these were, again, minors, very
14 young sometimes, involved in sexually explicit conduct.
15 And you have reason and common sense. And he knew that
16 fact, right. So you have -- you have to say that, yeah, he
17 knows this. Well, why does he know this, you have reason
18 and common sense. He's been downloading these for a long
19 period of time. He told you he's addicted to it, right.
20 This is the stuff that excites him. He knows by opening
21 those, by viewing those, he can see as clearly as you can
22 that those are little kids, infants at times, involved in
23 this activity.

24 And that such visual depiction was received or
25 distributed by means of a facility of interstate or foreign

1 commerce, including a computer. Our ability to prosecute
2 this case involves some form of interstate commerce, which
3 the law defines as just using a computer. As long as you
4 use a computer in order to download these images and
5 videos, then you qualify for this element. Here you have
6 the Dell laptop computer here, this red one. You have the
7 Silicon hard drive. You have multiple disks. You also
8 have the forensic examination that showed these were being
9 downloaded and where they were downloaded too. And you
10 have the defendant's statements, multiple times with the
11 investigators where he said I was downloading this stuff.
12 I downloaded them. They asked him when was the last time
13 you downloaded, well, I downloaded them add few days ago.
14 And even on the stand here, he said, yes, I was downloading
15 them.

16 So here's the element of the offense again, and
17 all of the evidence we talked about meets all these
18 elements beyond a reasonable doubt. The physical evidence
19 alone, without the defendant's statements, without his
20 testimony, would meet all of the elements. There is enough
21 evidence there to meet all of the elements. But the
22 defendant's statements at the scene, as well as his
23 testimony, further go to prove those elements. There is
24 nothing that is in dispute in this case as far as the
25 elements are concerned. Look through it, there's

1 nothing in there that's been anything disputed that we do
2 not meets these elements.

3 There may be a question in your mind about why
4 would he get on the stand and say that he has been
5 receiving or downloading this pornography, there must be
6 some defense here that we're not aware of. It's okay to
7 put the government to its proof, and we have done that in
8 this case. I submit to you that we have proven every
9 element beyond a reasonable doubt, and we're asking you now
10 to return a verdict of guilty and hold the defendant
11 accountable for the crime in which he was charged. Thank
12 you.

13 THE COURT: Okay. Mr. Wineman?

14 MR. WINEMAN: Thank you, Your Honor.

15 THE COURT: Ladies and gentlemen, I neglected to
16 mention two things. Once again, as indicated in the
17 instructions, the opening and closing -- opening statements
18 and closing arguments are not evidence, they're the
19 attorneys' comments of what they think the evidence shows.

20 And then the other thing, the indictment is not
21 evidence. Indictment is not evidence of anything. It's
22 simply a charge returned by the grand jury, doesn't affect
23 presumption of innocence, it's not evidence. Go ahead.

24 MR. WINEMAN: Thank you. Good afternoon, ladies
25 and gentlemen. First of all, I want to thank you for all

1 the attentiveness and time that you've given to the trial.
2 As the magistrate and The Judge have indicated, this is one
3 of the most important things you can do as a citizen of the
4 United States.

5 Next thing I want to do is apologize to you for
6 what we all had to watch yesterday. It certainly wasn't
7 pleasant. And on behalf of Karl and his family, apologize
8 to you for that. And without -- I'm not going to go into a
9 great amount of detail. I don't recall any bestiality
10 being shown, but certainly that's not highly relevant under
11 these circumstances.

12 I would like to talk to you a little bit about --
13 and, again, thank you because in your role as jurors,
14 whether you know it or not, you are going to assist Karl in
15 dealing with his addiction. And I think it's clear from
16 the statements he made to this gentleman at his home and
17 the testimony he's given, that he has now accepted the fact
18 that he's an addict. And, you know, it's amazing, we all
19 learn new things about life every day. The older you get,
20 sometimes the more you think you learn. You know, I
21 learned that I had a preconception of the evils of the
22 internet until I got into this case a little bit. I grew
23 up in a -- internet did not exist. We had little TVs we
24 used to watch, you know, very few TV shows. I had an
25 incident with the internet not too long ago. Unfortunately

1 my died -- my wife died in August of last year, about a
2 month after we bought a new house, my step-son was living
3 with me, and ended up moving out a couple months later
4 because I cut off the internet. Well, part of the problem
5 I thought with him was I thought he was addicted to these
6 internet games and wasn't working, and I thought, geez,
7 what is this internet stuff. And I didn't realize that it
8 could be the source of the type of thing that, you know,
9 began Karl's addiction in this case. An addiction it is.
10 And, you know, I lost my wife to addiction.

11 And one of the biggest things -- and that's why I
12 thank Karl for being here today -- in life is if you
13 believe one of your kids is suffering, it's a terrible
14 thing. And you've got to learn to be supportive and all
15 that type of thing. And, you know, that happened in
16 between her death and the trial today that I had the
17 inclination that my middle son who was very close to -- had
18 become addicted to pain killers. And I think anybody that
19 reads the news knows that pain killers can lead to heroin
20 very quickly and very easily. And thank God for my
21 daughter because she came forward, and this is the
22 importance of sibling support, I guess, and paid for him to
23 go to a treatment facility in Tennessee, and everything
24 turned out all right. As a matter of fact, this week I had
25 a water break, and who was there for me, my middle son.

1 He's about Karl's age, as a matter of fact.

2 So, you know, addiction is unbelievable the way
3 it touches people's lives, and it's a terrible thing. And
4 part of the addiction, and the biggest part of it is
5 acceptance at the very beginning. Once the addiction is
6 identified, is acceptance. And I've got to thank this
7 gentleman and the other people that were involved in the
8 investigation because that acceptance only came on the day
9 they went to his house.

10 And I'll be honest with you, our biggest concern
11 in trying the case was that he'd be accused of being a
12 dealer or a distributor. And I think that's kind of gone
13 by the way side now, according to what The Judge instructed
14 you on and The State's arguments, I think that has been
15 resolved. That was one of his main concerns. And, you
16 know, once again, he appreciates your attentiveness that
17 you've given us over the last several days.

18 And, you know, there's many things he's going to
19 have to go through to accomplish rehabilitation. But this
20 has been a tremendous help, this investigation and this
21 trial. And what he's going to need in the future, and
22 that's why I asked Karl and Mike about support in the
23 future because that's going to be something that he will
24 need, acceptance. In this type of case resentments can be
25 very dangerous also. And he's had some of those, but I

1 think a lot of those have gone by the way side with the
2 trial that's gone forward. And he needs to identify a
3 higher power for himself, and he needs to kind of turn his
4 life over to that higher power, whoever that may be. I'm
5 certainly not here to preach to him or advocate, you know,
6 what or who the higher power's going to be, but I can tell
7 you that there's a need for support, community support.
8 One of the resentments, if you'll recall in his interview,
9 was that alcoholics get all the help, okay, or alcoholics
10 have things available to them, right. That's true. You
11 know, that's true. But I am sure there are groups, there
12 are counselors that will be available to help, and, you
13 know, once that problem's been identified, to support him
14 on a day-to-day basis. That support is so important. I
15 was so fortunate after I lost my wife because I had a new
16 employee who was rehabbing herself who took over a lot of
17 the tasks at home. I've got a 91-year-old sister who has
18 Alzheimer who lives with me. And this girl is a nurse, and
19 she helped with the medication, helped take care of her.
20 And, you know, it was all because of the program that I was
21 involved in that allowed me to make contact with this
22 person. And I find out Monday she's leaving to go work for
23 Ohio State University. So that's another loss that's going
24 to be -- we're going to have to deal with. But it
25 certainly has been a God sent to me, and that's what Karl

1 will need to have is God sends through family, through
2 community, and that type of thing to get through the
3 addiction.

4 And once again, I want to thank you, ladies and
5 gentlemen, for the attentiveness you've given. Thank The
6 Court for the courtesy that's been provided to us. And ask
7 you to pray for Karl. Thank you.

8 THE COURT: Okay. Any rebuttal on behalf of the
9 government?

10 MS. TANGEMAN: Yes. First of all, lets start
11 with one thing, you're not here to concern yourself with
12 the redemption or the rehabilitation of this defendant. It
13 is not your job. Nor are you to accept invitations to feel
14 sympathy and let that guide your deliberations. No matter
15 what any attorney says, this is not about the defendant's
16 struggles with his addiction, and it's not about anybody
17 else's struggles with any of their addictions, okay. So
18 set that aside. The jury instructions clearly say you do
19 not let sympathy guide your decision. The reason why we're
20 here is because the defendant committed a crime. The
21 internet did not commit a crime, the defendant did, okay.
22 He doesn't get a pass for that because the internet might
23 welcome some addicts. That doesn't negate the crime. The
24 crime occurred.

25 And while he took the stand and he admitted to

1 it, he also seemed to suggest like it was a little less
2 serious because he didn't distribute it. Well, let me tell
3 you, folks, the crime in and of itself of receiving child
4 pornography is a crime. We don't have to prove
5 distribution. Don't know how many times we're going to
6 have to say that, but we'll say it one more, okay. And
7 whether he's sorry about it, whether he's not sorry about
8 it, whether he plans to get treatment, or whether or not he
9 doesn't, that is not what's at issue. Whether or not he's
10 willing to deal with it, whether or not his family is
11 willing to support him is not the issue. The issue is the
12 evidence that came from the witness stand, all the exhibits
13 in evidence, and the agreed-upon stipulation. You take
14 that, and you apply it to the law. That's what your job
15 is. And invitations to shirk your job by going off on
16 different tangents about the human side of this defendant
17 and his addiction, that is not your job. Don't accept
18 those invitations.

19 Good people can commit crimes. Bad people can
20 commit crimes. All kinds of people can commit crimes. You
21 are not here to sit in moral judgment. You are here to sit
22 in legal judgment. You follow the evidence and the law.
23 That's what your job is.

24 And, you know, ladies and gentlemen, the only
25 thing that we're asking is that you find this defendant

1 accountable. That's what we're asking you to do. Because
2 he, like everyone else, when he turns on his computer, has
3 the choice to do something legal or to do something
4 illegal. And he chose, not on one occasion, not on two
5 occasions, not one year, not two years, but year after year
6 after year, to do the wrong thing, at the expense of the
7 children you watched. Hold him accountable for that
8 because that's what we're here for, the truth, the evidence
9 and the law. Find him guilty.

10 THE COURT: Okay. Ladies and gentlemen, that
11 completes the presentation of the case by the parties.
12 Deanna will now read you the final concluding instructions,
13 after which I will excuse the alternate and have you retire
14 to the jury room to begin your deliberations. Deanna.

15 COURTROOM DEPUTY: Number 27, Deliberations. You
16 are about to retire to the jury room to begin your
17 deliberations.

18 You are free to talk about the case in the jury
19 room.

20 In fact, it is your duty to talk with each other
21 about the evidence, and to make every reasonable effort to
22 reach unanimous agreement. Talk with each other, listen
23 carefully and respectfully to each other's views, and keep
24 an open mind as you listen to what your fellow jurors have
25 to say. Try your best to work out your differences. Do

1 not hesitate to change your mind if you are convinced that
2 other jurors are right and that your original position was
3 wrong.

4 But do not change your mind just because other
5 jurors see things differently, or just to get the case
6 over. In the end, your vote must be exactly that, your own
7 vote. It is important for you to reach unanimous
8 agreement, but only if you can do so honestly and in good
9 conscience.

10 No one will be allowed to hear your discussions
11 in the jury room, and no record will be made of what you
12 say. You should all feel free to speak your minds.

13 Listen carefully to what the other jurors have to
14 say, and then decide for yourself if the government has
15 proved to the defendant guilty beyond a reasonable doubt of
16 the charge in the indictment.

17 The first thing you should do in the jury room is
18 to choose your foreperson. This person will help to guide
19 your discussions, and will speak for you here in court.

20 Once you start deliberating, do not talk to the
21 clerk, or me, or anyone else except each other about the
22 case. Your discussions, moreover, can occur only when the
23 twelve of you are together in the jury room. If any juror
24 is not in the jury room, do not discuss the case until that
25 juror joins you.

1 While your deliberations are continuing, do not
2 discuss the case outside the jury room, either with your
3 fellow jurors or anyone else.

4 If you have any questions or messages, they
5 should be written, signed by the foreperson, and given to
6 the clerk to give to me. I may have to talk to the lawyers
7 before responding, so it may take me some time to get back
8 to you.

9 In any communication with The Court or clerk, do
10 not write down, tell, or indicate in any way whatsoever how
11 you stand on your votes.

12 Remember that you must make your decision based
13 only on the evidence that you saw and heard here in court.
14 Do not try to gather any information about the case on your
15 own while you are deliberating. Likewise, do not
16 communicate with anybody outside the jury room until you
17 have reached your verdict and it has been announced in open
18 court.

19 If you unanimously find the defendant guilty
20 beyond a reasonable doubt, then it will be my job to decide
21 what the appropriate punishment will be. Deciding what the
22 punishment should be is my job, not yours. It would
23 violate your oaths as jurors to even consider the possible
24 punishment in deciding your verdict.

25 Your verdict, whether it is guilty or not guilty,

1 must be unanimous.

2 To find the defendant guilty, every one of you
3 must agree that the government has overcome the presumption
4 of innocence with evidence that proves his guilt beyond a
5 reasonable doubt.

6 To find the defendant not guilty, every one of
7 you must agree that the government has failed to convince
8 you beyond a reasonable doubt. Either way, guilty or not
9 guilty, your verdict must be unanimous.

10 I have -- I have prepared verdict forms for you
11 to record your verdict. On the completion of your
12 deliberations, after you have reached unanimous agreement
13 as to the verdict, sign the appropriate form and notify the
14 clerk that you have concluded your deliberations.

15 Do you want me to read the verdict form, Judge?

16 THE COURT: Read the verdict form.

17 COURTROOM DEPUTY: In United States District
18 Court for the Northern District of Ohio, United States of
19 America versus Karl J. Rogers, we the jury unanimously find
20 the defendant not guilty as charged in the indictment.

21 And the second verdict read -- form reads in
22 United States District Court for the Northern District of
23 Ohio, Western Division, United States of America versus
24 Karl J. Rogers, we the jury unanimously find the defendant
25 guilty as charged in the indictment.

1 I remind you that nothing I have said or done
2 during this trial has been meant to influence your decision
3 in any way. You decide for yourselves if the government
4 has proved the defendant guilty beyond a reasonable doubt.

5 The exhibits will be sent back to you shortly.

6 The jury may now retire.

7 THE COURT: Ladies and gentlemen, before you step
8 out, I just want to do one -- somewhat unhappy chore, and
9 that is to advise juror seven that you are the alternate,
10 and your service is no longer needed because we conclude
11 the submission of the case and jury begins deliberations
12 with full complement of 12, of course, which requires
13 concurrence of all 12 jurors, not 13, to return a verdict
14 of guilty or not guilty. I don't want you to feel that
15 your service is not appreciated, quite the contrary. You
16 were available in the event that some unforeseen
17 circumstance got in the way of another juror being able to
18 continue as part of the jury. You're welcome to go, or
19 you're certainly welcome to stay. It's entirely up to you.
20 But I'm afraid that you cannot join your fellow jurors with
21 whom you've been the last 30 hours or so, plus during voir
22 dire, during the course of deliberations, which, of course,
23 is the ultimate purpose of jury service is to make that
24 determination. So thank you very much. I will see to it
25 that you get a certificate and a small memento of your

1 service. You're welcome to stay if you wish. It's
2 entirely up to you. Thank you very much.

3 MS. TANGEMAN: Your Honor, I think the jurors are
4 a little confused as to which person is the alternate
5 because at the initial voir dire they were told to use
6 their juror numbers.

7 THE COURT: Deanna, if you'll read the first name
8 and the last --

9 COURTROOM DEPUTY: Kurt H.

10 THE COURT: Thank you, sir. You're welcome to
11 stay if you wish, or you're free to go. It's entirely up
12 to you. Thank you for your service.

13 Okay. Counsel, is there anything further before
14 I permit the jury to retire and begin deliberations?

15 MS. TANGEMAN: Not on behalf of the government.

16 THE COURT: Mr. Wineman?

17 MR. WINEMAN: No, Your Honor.

18 THE COURT: Okay. Ladies and gentlemen, you may
19 begin your deliberations. Thank you.

20 (Jury retired to deliberate at 2:11 p.m.)

21 THE COURT: You may be seated. Will you be here
22 in the building or over at your office? What's your
23 pleasure.

24 MS. TANGEMAN: We'll probably stick around for a
25 little bit, Your Honor.

1 THE COURT: Okay, that's fine. Reese, will you
2 be around in the building?

3 MR. WINEMAN: Yes, Your Honor.

4 THE COURT: Okay. Very well. There is space
5 upstairs in the library if you want to go up there. And
6 quite candidly, if you and your client want to spend the
7 time some other way, than simply looking at the window or
8 each other, I've got some books and magazines in my office.
9 Feel free to pick a couple up. Whatever you want. I know
10 that for everybody involved in trial, this is probably the
11 most agonizing period.

12 MR. WINEMAN: True.

13 THE COURT: Okay. I want to say something, quite
14 sincerely. Case was very well tried by both sides. And
15 Mr. Rogers, I think that you were very well served by your
16 lawyer, I really do. And likewise, the government, as
17 always, was capably and effectively served by its
18 attorneys. It's been a pleasure to have the trial, and I
19 don't think we had a single objection, did we?

20 MS. TANGEMAN: Maybe one.

21 THE COURT: Pardon?

22 MS. TANGEMAN: Maybe one.

23 THE COURT: If it was, it was so --

24 MR. WINEMAN: There was one, yes.

25 THE COURT: It was so insignificant I can't even

1 recall what it was, so that's a sign of a well-prepared,
2 well-tried case, and Judges always appreciate that. If I'm
3 not called upon to make any decisions, I can't make any
4 wrong decisions, so thank you very much. I'll be upstairs
5 working on work some other stuff, and we will wait for the
6 jury's verdict. Thank you, folks.

7 (Whereupon a recess was taken.)

8 THE COURT: I understand the jurors have a
9 verdict. Deanna, please get the jury. I will tell the
10 jurors, I'll go back and let them know -- I'll spend 10 or
11 15 minutes with them. I also tell them if they have any
12 interest in talking to the lawyers at all, I understand
13 this, that or other in terms of any suggestions or tips and
14 so forth. Some jurors do, lots of jurors go home, so if
15 you want to stick around for that, that's fine. It's
16 entirely up to you folks.

17 (Jury has entered the courtroom.)

18 THE COURT: You may be seated.

19 Okay. Ladies and gentlemen, I understand you
20 have a verdict. And if the foreperson will please hand the
21 verdict forms to the -- to Deanna. Thank you.

22 If the clerk will please read the verdict.

23 COURTROOM DEPUTY: In the United States District
24 Court for the Northern District of Ohio, Western Division,
25 case number 3:18CR26, United States of America versus Karl

1 J. Rogers, we the jury unanimously find the defendant
2 guilty as charged in the indictment.

3 Signed by all 12 jurors.

4 THE COURT: Does either counsel wish to have the
5 jury polled?

6 MS. TANGEMAN: No, Your Honor.

7 MR. WINEMAN: Yes, Your Honor, please.

8 THE COURT: I'll begin here and go down with
9 juror number one, is that your verdict?

10 JUROR: Yes.

11 THE COURT: Number two, is that your verdict?

12 JUROR: Yes.

13 THE COURT: Number three, is that your verdict?

14 JUROR: Yes.

15 THE COURT: Number four, is that your verdict?

16 JUROR: Yes.

17 THE COURT: Number five, is that your verdict?

18 JUROR: Yes.

19 THE COURT: Number six, is that your verdict?

20 JUROR: (Nonverbal response).

21 THE COURT: Okay. I didn't hear an answer.

22 JUROR: Yeah.

23 THE COURT: Okay. Thank you. Number seven --
24 now number seven?

25 JUROR: Yes.

1 THE COURT: Number eight, is that your verdict?

2 COURTROOM DEPUTY: We're on number nine now,
3 Judge.

4 THE COURT: Pardon?

5 COURTROOM DEPUTY: We let number seven go so
6 we're on nine --

7 THE COURT: I meant sitting -- is that your
8 verdict?

9 JUROR: Yes.

10 THE COURT: Sir, is that your -- or, ma'am, I
11 can't see, I'm sorry. Is that your verdict?

12 JUROR: Yes.

13 THE COURT: Okay.

14 JUROR: Yes, Judge.

15 THE COURT: Is that your verdict too?

16 JUROR: Yes, Your Honor.

17 THE COURT: Okay.

18 JUROR: Yes.

19 THE COURT: Very well. I think we've gotten --
20 all 12 have confirmed that that's their verdicts. The
21 verdict and judgment will be entered accordingly.

22 Ladies and gentlemen, your services are now done.
23 If you're agreeable I'd like to come back and say a few
24 words to you personally about how deeply and sincerely and
25 how grateful I am, the parties are, the community is, for

1 your service. And trust you took to heart -- I won't
2 repeat what I said yesterday morning at the outset, but I
3 think that the American jury system is the finest ball work
4 against tyranny any and government overreach and
5 unrestrained governmental power in terms of both the life
6 and liberty of its citizens that the mind of man has ever
7 created. And also for a brief span you have been the most
8 important part in the best judicial system, the best system
9 for deciding right and wrong, adjudicating disputes that
10 the mind has ever created. No matter what other critics
11 may say about the Federal Judiciary, think about it, think
12 what you've experienced. There has never been anything
13 that has stood more strongly and firmly as protector of our
14 rights and the integrity of the Republic than the American
15 jury, 12 ordinary citizens. I use that term in the most
16 positive way possible, ordinary citizens. Every one of you
17 had something else you were going to be doing this past
18 couple of days when you came for voir dire, every one of
19 you, we know that, we understand it. But unlike so many
20 other people, some people don't even register to vote
21 because they don't want to do jury service. I hope you go
22 away with a sense of not only shame on you because that
23 ballot was fought with bodies and bullets beginning at
24 Lexington and it's still happening today. And to throw it
25 away because you do not want to do the job that you have

1 done, not only shame on people of that mind set or others
2 that don't want to do that job, but I hope you go away
3 feeling just a little bit sorry for them because of what
4 they've missed. As difficult as that job is, our liberties
5 and our security depend upon you, the ordinary citizen,
6 much more than they do on me. They really do. So thank
7 you very much.

8 If you have a few more minutes I'd like to come
9 back and thank you each personally. Thank you very much
10 for your service, your patience, your deliberation and your
11 verdict.

12 (Jury excused.)

13 THE COURT: You may be seated. Anything further
14 for the government?

15 MS. TANGEMAN: Yes, Your Honor. We would ask
16 that the defendant be remanded into custody.

17 THE COURT: I understand. Mr. Wineman, anything
18 further, do you accept that --

19 MR. WINEMAN: Your Honor, we believe that Karl
20 does not represent a flight risk.

21 THE COURT: I agree completely. Quite candidly,
22 Ms. Tangeman, the government's right, I think it's
23 mandatory, but I think that the -- even though he no longer
24 is clothed in the presumption of innocence, and even though
25 the law properly gives me the authority and power to return

1 him -- to remand him to custody, I think as an important
2 aspect of due process of law that I make that
3 determination.

4 MR. WINEMAN: Yes, Your Honor.

5 THE COURT: This young man is going to be far
6 better off spending the next three or four weeks or
7 whatever at home with the people who have come here, one of
8 the most dreadful experiences of their lives, and said I
9 stand up for my boy, I stand up for my brother. That's the
10 kind of support you're going to need that you're looking
11 forward eagerly to take. I think everybody who saw you
12 testify understands that. And that is not to excuse the
13 role that you played in what happened, what everybody saw.

14 And so over the government's objection with the
15 right to appeal, the defendant will be allowed to report
16 when and as The Bureau -- The Bureau of Prisons, the
17 Marshal Service notifies him when and where to report.
18 Probably be two to four weeks I think. That's usually
19 typical time, isn't it, Jim -- Matt, I'm sorry, I can't
20 see. It's about four weeks, but you'll be told when and
21 where to go. And that's after the sentence of course. So
22 I've got to impose the sentence -- the sentencing date will
23 be --

24 COURTROOM DEPUTY: Sometime in late August.

25 THE COURT: I haven't picked the date, we'll give

1 it to you later. There'll be -- a pretrial service
2 probation officer will have an interview with you.
3 Mr. Wineman has a right to attend, I would too -- under all
4 circumstances, I would have my lawyer with me, very
5 thorough background check, usually about 20, 30 pages long.
6 Lawyers get a copy, Mr. Wineman will go over it with you.
7 If there are any mistakes at all, he'll call them to the
8 officer's attention. He or she will correct them. If
9 there's some that aren't corrected to your satisfaction,
10 then I will adjudicate those at sentencing, and that will
11 be sometime in August. Okay. I really think --

12 MR. WINEMAN: Thank you.

13 THE COURT: The government's standpoint, I think
14 that all of us are better off if this young man is home and
15 beginning to work at this very serious and awful problem.

16 Once again, I want to commend the lawyers for a
17 case well tried. I really appreciate it. So, Matt, if you
18 want to stick around a little longer, that's fine too.

19 Thank you. We'll be in recess.

20

21

22

23

24

25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

s:/Angela D. Nixon December 14, 2020

Angela D. Nixon, RMR, CRR Date

I N D E X

1			
2	WITNESS	PAGE	LINE
3	<u>Dylan McLaughlin</u>		
4	Direct Examination by Mr. Wineman		200 1
5	Cross-Examination y Mr. Simko	201	4
6	<u>Karl C. Rogers</u>		
7	Direct Examination by Mr. Wineman		204 16
8	Cross-Examination by Mr. Simko		207 11
9	ReDirect Examination by Mr. Wineman	208	4
10	<u>Michael Rogers</u>		
11	Direct Examination by Mr. Wineman		210 2
12	Cross-Examination by Ms. Tangeman	211	11
13	<u>Karl J. Rogers</u>		
14	Direct Examination by Mr. Wineman		215 2
15	Cross-Examination by Ms. Tangeman	219	20
16	ReDirect Examination by Mr. Wineman	226	8

12

13

14

15

16

17

18

19

20

21

22

23

24

25